Office-Supreme Court, U.S.
FILED
JUN 17 1981
ALEXANDER L. STEVAS,

80-2152

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF MISSOURI, et al.,
Petitioners,

v.

CRATON LIDDELL, et al.,
and,
EARLINE CALDWELL, et al.,
and,
JANICE ADAMS, et al.,
and,
BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, et al.,
and,
THE CITY OF ST. LOUIS, MISSOURI,
and,
THE UNITED STATES OF AMERICA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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June, 1981

KELLY PRESS, INC., 201 S. Eighth St., Columbia, Missouri Dial 314/449-4163

I

QUESTIONS PRESENTED

1. Whether the effectiveness of a 1954-1956 desegregation plan can be judged on the basis of the number of predominately black schools existing in a system in 1962 in view of the fact that (1) there are no statistics regarding racial composition of the schools for the intervening years and (2) the racial composition and distribution of the district as a whole had changed drastically in the interim?

2. Whether State liability for an alleged failure to disestablish a dual school system can be premised on the State being an absolute guarantor that political subdivisions will afford equal protection of the law, where (1) the State had removed all legal impediments at the State level to effect of dismantling of the dual school system, (2) the State had not controlled, directed or participated in the actions of the local school board, and (3) the State had not been shown to have exercised or failed to exercise its own authority in an unconstitutional manner?

3. Whether a finding of intradistrict liability on the part of the State can, consistent with *Milliken* v. *Bradley*, support an order to bear the cost of and participate in a plan of voluntary pupil exchanges with nonparty school districts?

4. Whether an order of mandatory interdistrict relief can be premised upon a finding of fact not within the scope of any pleadings in the case and not tried by the consent of the parties?

5. Whether a district court can order the preparation of a mandatory interdistrict plan when allegations of interdistrict violations are not present in any of the pleadings, no hearing has been held with regard to any such issues, and no findings have been made thereon?

LIST OF ALL PARTIES

1. The State of Missouri; Christopher S. Bond, Governor of the State of Missouri; Mel Carnahan, Treasurer of the State of Missouri; John Ashcroft, Attorney General of the State of Missouri; Stephen C. Bradford, Commissioner of Administration; Arthur L. Mallory, Commissioner of Education; State Board of Education; Delmar A. Cobble, Grover Tamm, Jimmy Robertson, Dale M. Thompson, Ervin A. Williams, Donald W. Shelton, and Robert Welling, Members of the State Board of Education.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioners, the State of Missouri, et al., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on March 3, 1980, reversing the judgment of the United States District for the Eastern District of Missouri entered on April 12, 1979, and the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on February 13, 1981, affirming the judgment of the United States District Court for the Eastern District of Missouri entered on May 21, 1980.

OPINIONS BELOW

The opinions of the District Court are reported at 469 F.Supp. 1304 (E.D.Mo. 1979) and 491 F.Supp. 351 (E.D.Mo. 1980). The first opinion of the United States Court of Appeals for the Eighth Circuit is reported at 620 F.2d 1277 (8th Cir. 1980). The second opinion of the Court of Appeals is as yet unreported, but is reprinted herein as Appendix A. A copy of the order of the United States Court of Appeals for the Eighth Circuit denying the petitions for rehearing is printed herein as Appendix B.

JURISDICTION

The most recent judgment and mandate of the Court of Appeals was filed on March 19, 1981. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The United States Constitution, Amendment XIV, Section 1.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

This is a school desegregation case which was initially filed in 1972 by the Liddell group of plaintiffs against the St. Louis Board of Education, its members, and certain named administrators. The Liddell plaintiffs and the City

Board of Education entered into a consent decree which was approved by the District Court on December 24, 1975. In January of 1976 objections to the proposed consent decree were filed by a second group of black parents, the Caldwell plaintiffs, who were joined by the St. Louis chapter of the NAACP. At this time the Caldwell group also moved to intervene as party plaintiffs. The District Court's denial of the motion to intervene was reversed by the United States Court of Appeals for the Eighth Circuit. *Liddell* v. *Caldwell*, 546 F.2d 768 (8th Cir. 1976).

Following the remand by the Court of Appeals, the United States, the City of St. Louis, and the Adams group were allowed to intervene as plaintiffs. Also during 1977 the State of Missouri, the Commissioner of Education of the State of Missouri and the State Board of Education and its individual members were added as defendants.

Following a trial on the merits the District Court handed down its decision on April 12, 1979, and found that the St. Louis City Board of Education had disestablished the former dual school system. *Liddell* v. *Board of Education, City of St. Louis*, 469 F.Supp. 1304 (E.D.Mo. 1979). The United States Court of Appeals for the Eighth Circuit reversed and found that the formerly mandated dual school system had not been disestablished. *Adams* v. *United States*, 620 F.2d 1277 (8th Cir. 1980). The Adams plaintiff petition for writ of certiorari was denied. *Adams* v. *United States*, ___ U.S. ___, 101 S.Ct. 88, 66 L.Ed.2d 29 (1980).

Following the remand by the Eighth Circuit the St. Louis Board of Education submitted its plan for desegregation of the public school. After several days of hearings in May of 1980 the District Court approved the plan in an order entered May 21, 1980 and filed Findings of Fact and Conclusions of Law on June 3, 1980. *Liddell* v. *Board of Education, City of St. Louis*, 491 F.Supp. 351 (E.D.Mo.

1980). In the course of the findings and order the District Court concluded that the State of Missouri was the primary constitutional wrongdoer and directed the State of Missouri to fund one-half of the desegregation plan up to approximately $11-million. The District Court also directed the State defendants, the United States and the St. Louis Board of Education to develop a plan for voluntary, cooperative pupil exchanges with the school districts of St. Louis County; to develop a plan for the consolidation and merger of the separate vocational educational programs of the Special School District of St. Louis County and the School District of the City of St. Louis; and to develop and submit to the court a suggested plan of interdistrict desegregation necessary to eradicate the remaining vestages of government-imposed school segregation in the City of St. Louis and St. Louis County. *Id.* at 353. The judgment of the District Court was affirmed by the United States Court of Appeals for the Eighth Circuit in an opinion entered on February 13, 1981. A copy of the opinion, as yet unreported, is printed herein as Appendix A. Petitions for rehearing were denied by the Court of Appeals on March 19, 1981. A copy of the order denying the petitions for rehearing is printed herein as Appendix B.

During the pendency of the appeal to the Court of Appeals, the Caldwell plaintiffs and the City Board of Education filed motions for leave to amend their pleadings to add some forty school districts as additional defendants and to assert claims for interdistrict relief. The District Court has not yet ruled upon these motions to amend.

Modifications to paragraphs 12(a) through 12(c) of the May 21, 1980 order were made by orders entered by the District Court on September 17, 1980 and December 19, 1980. These orders are printed herein as Appendices C and D. In an order entered on March 4, 1981, the District Court directed the State defendants to prepare another plan

for a voluntary pupil exchanges pursuant to paragraph 12(a) of the District Court's May 21, 1980 order. This order is printed herein as Appendix E. On June 11, 1981 the District Court entered an order for the implementation for the plan for vocational education. See Appendix F.

REASONS FOR GRANTING THE WRIT

I.

The Court of Appeals below applied an improper standard in determining the effectiveness of a 1954 desegregation plan implemented by the School Board of the City of St. Louis, in that the comparison of racial composition of pre-Brown schools with the number of predominantly black schools in 1962 is inherently unreliable because (1) there were massive population shifts within the City of St. Louis in the interim and (2) there was an absence of comprehensive racial data in the schools for the interim period such that the continuity of racial composition in the schools cannot be established but that what evidence there is does not corroborate the existence of such continuity.

Prior to 1954 the schools of the State of Missouri were admittedly segregated by race pursuant to a constitutional provision. However, even prior to this Court's decision in *Brown* v. *Board of Education of Topeka*, 347 U.S. 483 (1954), the Board of Education of the City of St. Louis began preparation for the institution of a desegregated system. Thus on June 22, 1954 the Board of Education adopted a plan for the desegregation of the St. Louis public school system. The plan was to be completely effective over the period of 1954 through 1956.

The essence of the desegregation plan adopted was the assignment of all students to neighborhood schools. To accomplish the elimination of overlapping attendance zones for black and white students, new attendance zones

were drawn by use of IBM cards which contained the number of students and their grades for each city block in the city. Names, addresses, and any racial data for these students was not available in this process. In fact, since race was eliminated as a criterion for admission or assignment in the public schools, any reference to race was excluded from the records of the school system until 1962 when a racial count was taken pursuant to the recommendation of the United States Commission on Civil Rights. The new attendance zones were based on capacity of the individual school buildings, the distance of students from the buildings and the safety of the children, such as avoiding dangerous intersections.

The Board of Education provided that students who were already attending a school would have the option of continuing in that school if the redistricting had placed them in another attendance zone. This option would last only so long as the child attended that school and when he moved on to the next level of schooling the student would be required to attend the school in the appropriate attendance zone. This provision was simply a continuation of a previous policy under which a child could continue at a particular school even if his residence had changed.

The District Court initially concluded that this plan succeeded in effectively disestablishing previously mandated dual system in the City of St. Louis. *Liddell* v. *Board of Education, City of St. Louis*, 469 F.Supp. 1304 (E.D.Mo. 1979). The United States Court of Appeals for the Eighth Circuit reversed this finding and concluded that the dual school system had not been disestablished. *Adams* v. *United States*, 620 F.2d 1277 (8th Cir. 1980). Because racial data was not kept between 1954 and 1962, there is only spotty evidence regarding the racial composition of the St. Louis public schools in the interim. The Court of Appeals' conclusion is premised strongly on the fact that in 1962, when

records on racial composition were again kept, all twenty-eight (28) of the formerly black elementary schools still in existence were virtually all black and that fifty (50) of the formerly white schools remained eight-five percent or more white. *Id.* at 1291.

This use of 1962 statistics, however, presumes a continuity of the racial composition of the schools in question. Petitioners believe that such presumption is completely unwarranted. *Columbus Board of Education* v. *Penick*, 443 U.S. 449, 472 (1979) (separate opinion of Mr. Justice Stewart).

Not only is any presumption of continuity logically unsound, but it is unsound in view of the particular facts of the St. Louis situation. The period of 1954 through 1962 was one of widespread demographic change within the City of St. Louis. From 1950 to 1960 the white population in the City of St. Louis declined over 160,000, while black population increased by over 60,000. The public school system lost over 10,000 white students and gained over 29,000 black students. As a result, the system went from being thirty-five percent black in 1954 to fifty-five percent black in 1962.

Not only was this a case of a simple increase in the percentage of blacks in the City population as well as the public school population, but there was a widespread movement of blacks within the city itself. *Liddell* v. *Board of Education, City of St. Louis, supra* at 1319. Fifty percent of the black population moved out of older black areas. As a result, not only were the previously black schools predominantly black in 1962 but thirty-six previously all white schools had become over ninety percent black by 1962. The District Court concluded because of the rapid demographic changes, the previously black schools, even though predominantly black in 1962, were not vestiges of the dual system. The District Court found that previously

white schools in the same area as the alleged "vestige" schools had experienced a racial inversion to predominantly black. *Liddell* v. *Board of Education, City of St. Louis, supra* at 1329 through 1330.

The Court of Appeals stated that the City Board could have redrawn the boundaries to include significant numbers of white students in formerly all black schools, without sacrificing the neighborhood concept. Presumably if the City Board had done this, the dual system would have been considered disestablished. The question which needs to be asked, however, is whether such an action by the City Board would have had any measurable effect upon the composition of the schools in 1962.

The petitioners believe that there is no reasonable basis from which it could be concluded that a "better" redistricting in 1954 would have been able to withstand the demographic changes which the City of St. Louis was undergoing. Petitioners believe, however, that in order for schools in 1962 to be considered vestiges of the dual system, it must be found that the actions of the Board in 1954 would have made some appreciable difference in the 1962 composition. No such finding has been made and without such a finding there would be a total absence of causality.

The Court of Appeals stated that the 1962 racial figures were corroborative of what evidence there was concerning the immediate effect of the 1954 desegregation plan. The Court of Appeals first refers to 1955 "projections" which indicated that forty-six of the eighty-three previously white elementary schools would have an all white student population. In the remaining thirty-seven schools the black population would range from fifty-six percent to less than one percent. The "projections" also indicate that twenty-seven of the forty formerly black schools would remain all black and that in the remaining thirteen the number of white

students would range from eighteen percent to less than one percent.

Several factors need to be taken into account in assessing this material. First, it must be remembered these are "projections". Second, these estimates are based upon a check of parental choices in the spring of 1955. Thus, the estimates would take into account a parent's preference for use of the continuation transfer provision. The figures do not indicate, however, the normal racial composition of the new attendance zones. Third, the testimony indicated that these estimates were revised upward, apparently because not all parents were able to take advantage of their preference for the continuation transfer. In order for a continuation transfer to be effective, there had to be space available in the school previously attended and the student had to provide his own transportation. Thus, the testimony was that as implemented at least two thirds of the elementary school population in the City of St. Louis was attending racially mixed schools during the first year. Finally, the effect of the continuation transfers would diminish as the years passed because students would no longer be eligible for them as they graduated from the particular school they had attended.

Similar factors undercut the Court's reliance on the first year high school figures. We do know that 40% of the black students assigned to new schools chose to attend the previously all black high schools. The absence of whites in these schools can also be accounted for by the continuation option because as Appendix II to the Eighth Circuit's opinion shows, the attendance zones for the formerly black high schools, while heavily black, were racially mixed. *Adams* v. *United States, supra* at 1299.

It is well established that there is no constitutional right to any particular racial balance in public schools.

Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1(1971). Thus, viewing the St. Louis public school *system*, petitioners believe that not only did the City Board establish procedures to ensure that students would be admitted to schools on a racially nondiscriminatory basis but that this policy did lead to a substantial degree of racial mixture. Certainly no student was excluded from any school because of his race as indicated by the rapid racial inversion of many formerly all white schools. The Board's policy, therefore, not only reflected the composition of existing neighborhoods but, more importantly, changes therein. *Goss* v. *Board of Education, City of Knoxville, Tennessee*, 340 F.Supp. 711 (E.D.Tenn. 1972), *aff'd* 482 F.2d 1044 (6th Cir. 1973), *cert. den'd* 417 U.S. 1171 (1974).

In order for the City Board to have met the standards of the Court of Appeals in 1962, it would have been required to make yearly adjustments in its assignments of students. Such yearly adjustments are not required and are beyond the jurisdiction of a federal court to order. Thus, to base the question of effectiveness of the 1954 plan to a large degree on the racial composition of the schools in 1962 would be to require what the District Court or Court of Appeals could not have ordered directly. *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976).

Thus, the racial composition of the schools in 1962 is not relevant to the question of whether the Board's 1954 plan was effective. Rather, the composition of the schools in 1962 is primarily relevant to the City Board's evidence that the schools were resegregated through demographic changes. Here, however, the Court of Appeals totally misconceived the proper mode of analysis of this evidence. The Court of Appeals stated that they took this into account in determining the appropriate remedy. *Adams* v. *United States, supra* at 1291. Petitioners respectfully suggest that

this evidence is not primarily related to the appropriate remedy. Rather, the evidence of resegregation and demographic changes is relevant to the question of whether or not racial imbalance in 1962 and afterwards is a vestige of the previously dual school system. By considering this evidence only on the question of remedy, the Court of Appeals in effect denied the City Board a chance to prove that later racial imbalance was a result of other factors, rather than the dual school system. It is interesting to note that the desegregation plan approved in *Goss, supra,* was virtually identical to that which the St. Louis Board of Education adopted *without court order 36 days after this Court's decision in Brown.* The court in *Goss* declared the Knoxville school system unitary. The primary difference between St. Louis and Knoxville seems to be that Knoxville had a relatively stable black population, while St. Louis did not.

The Court of Appeals simply never recognized that a dual school system may be disestablished by natural social forces as much as by any deliberate action of a governmental body. The crucial question which the Court of Appeals adroitly avoided is whether or not the St. Louis school system would be any different today if there had been an effective dismantling as the Court of Appeals implied could have been done in 1954.

The Court of Appeals' analysis of these complex issues is both hasty and shallow. However, indications of the Court of Appeals' haste to decide this case were present as early as 1976 when this case was before the Court of Appeals for the sole purpose of deciding whether or not additional parties should be permitted to intervene. *Liddell* v. *Caldwell,* 546 F.2d 768 (8th Cir. 1976). In the course of that decision the Court of Appeals stated:

> "The parties were faced with an admittedly *de jure* segregated school system . . ." *Id.* at 772.

> "In no event should implementation of plans for a unitary school system be delayed beyond the commencement of the 1977-78 school term." *Id.* at 774.

The above statement clearly assumes, prior to any trial on the merits, that the St. Louis school system was not unitary. In short, the Court of Appeals in its rush to reverse the District Court and to reaffirm its own opinion of four years previously, employed a totally inaccurate test of the effectiveness of the desegregation plan, and in effect, denied the City Board a proper consideration of its defense.

II.

The Court of Appeals' finding of liability against the State of Missouri is erroneous because (1) it is contrary to Due Process, (2) is based upon legal principles so vague as to be virtually incomprehensible and render the State a virtual guarantor that its political subdivisions obey constitutional commands, without any finding of direct participation at the State level and, (3) to the extent that the finding of liability requires the State of Missouri to fund a specific level of the desegregation plan, it far exceeds the permissible relief available without a finding of participation by State officials.

The role of the State of Missouri in this litigation over the years has admittedly been fraught with confusion as a result of the procedural morass which has developed. Neither the State of Missouri nor any State officers were named defendants when this action began in 1972. The State of Missouri, the State Board of Education and the State Commissioner of Education were added as party defendants in July 1977 after the case had been remanded from the Court of Appeals with direction to order the intervention of another class of plaintiffs represented by the NAACP. (The other State defendants were added in 1980, after judgment). Even though named as defendants, no complaint

was ever filed against the State or its officers. The first complaint was actually filed in June of 1980 after the trial on the merits, the decision by the District Court, and the reversal and remand by the Court of Appeals. The purpose of the amended complaint against the State was ostensibly to conform to the issues tried by consent. Since there was no complaint against the State to begin with it is highly questionable whether the complaint was properly filed after judgment. There were no pleadings against the State to be "realigned." *Cole* v. *Layrite Products Company*, 439 F.2d 958 (9th Cir. 1971). The petitioners, therefore, had no opportunity to defend in any meaningful manner because they had no notice of any particular allegations against them. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972). As pointed out *infra*, most cases discussing State liability do so on the basis of specific evidence of State involvement. The petitioners reasonably expected it would be the same here.

In any event, following the trial on the merits the District Court found that the State of Missouri promptly repealed statutes implementing its constitutional provision and later passed legislation outlawing discrimination in public accommodations, which included schools. *Liddell* v. *Board of Education, City of St. Louis*, 469 F.Supp. 1304, 1313-1314 (E.D.Mo. 1979).

In its opinion on the appeal from the District Court's decision, the Court of Appeals had no discussion at all concerning State liability. The Court of Appeals remanded for implementation of a desegregation plan.

Following a *remedy* hearing the District Court entered an order on May 21, 1980, which ordered the State to fund one-half of the desegregation plan up to approximately eleven million dollars. *Liddell* v. *Board of Education, City of St. Louis*, 491 F.Supp. 351, 353 (E.D.Mo. 1980).

On June 3, 1980, the Court entered Findings of Fact

and Conclusions of Law, which found that the State "never took any effective steps to dismantle the dual system . . ." *Id.* at 357. As a matter of law the Court then concluded that the State Defendants were the "primary constitutional wrong-doers."

On appeal from this decision, the State Defendants urged that the Court of Appeals had not reversed the District Court's earlier finding of nonliability on the part of the State and that therefore the District Court was without jurisdiction to make any new findings with regard thereto. The Court of Appeals rejected this argument as follows:

> "This contention is wholly without merit. In our March 3 opinion, we spjecifically recognized the causal relationship between the actions of the State of Missouri and the segregation existing in the St. Louis school system. Furthermore, we expressly directed the district court to apportion the costs of the desegregation plan among the defendants. *Adams* v. *United States, supra,* 620 F.2d at 1295 n.28. These statements amount to a *clear reversal* of the district court's findings concerning the liability of the State, and the State has chosen not to seek review of that decision in the Supreme Court. . . ." (Appendix A at 22) (Emphasis added).

The State Defendants submit that any reasonable reading of the Court of Appeals first opinion will not demonstrate the existence of a "clear reversal" on the issue of State liability. Following the direction to apportion costs the Court referred to Part VI of its Opinion. Part VI, however, did not deal with any failure to disestablish the dual school system in the City of St. Louis which was the basis of the District Court's finding of liability. Rather, Part IV simply refers to other segregative factors which intensified

racial segregation. If the Court of Appeals intended to find the State Defendants liable on this basis, the District Court certainly did not do so. In addition, it would be stretching the rules of procedure to the breaking point to assert that the State Defendants had any sort of notice at all that their liability was going to be grounded on something other than educational policy. It is interesting to note that when other parties pressed for a finding of liability against the United States, the United States argued that the language of Part VI of the Opinion of the Court of Appeals was an insufficient finding as to liability.

Further, the simple direction to apportion costs contained in the footnote conflicted with some more specific directions in the Court's Opinion. For instance, after discussing pupil reassignments the court directs that the City Board should use other techniques and "shall seek the help of the state and federal governments in financing." *Adams* v. *United States, supra* at 1296. This specific direction does not give any indication of potential state liability to fund one-half of the desegregation plan, up to approximately eleven million dollars. The State Defendants submit that if there was a reversal of the District Court's finding on the issue of State liability it was of such an obscure nature that it fully explains why the State defendants did not seek relief in this Court earlier.

Initially it should be noted that in single district desegregation cases the state involvement has not as a general rule been discussed. Where there has been some state involvement, the courts have always examined the evidence specifically implicating the state as opposed to that against a local board. The State of Missouri, however, has not been found to have committed any affirmative action to hinder or circumvent desegregation. *Griffin* v. *School Board of Prince Edward County,* 377 U.S. 218 (1964). *Cooper* v.

Aaron, 358 U.S. 1 (1958). *Norwood* v. *Harrison*, 413 U.S. 455 (1973). Instead, the State of Missouri repealed all of its statutes which had implemented its constitutional provision. It enacted legislation prohibiting discriminaton in public accommodations, which statute included schools and established an administrative procedure to enforce that prohibition. Thus, the State of Missouri did not simply just abandon its previous policy of segregation, it affirmatively prohibited it and provided an administrative remedy, in addition to whatever judicial relief would be available to enforce the statutory prohibition. In this day and age no state can act as an absolute guarantor that any of its citizens will not be subject to discrimination of one sort of another, even at the hands of political subdivisions of the state. Petitioners submit, however, that the State meets its affirmative obligations under the Fourteenth Amendment by providing a remedy for any such violation. In the related area of deprivation of property without due process of law, it has been held that a state does not violate the Fourteenth Amendment as long as it provides a remedy for any such deprivation that takes place. *Parratt* v. *Taylor*, No. 79-1734 (49 U.S.L.W. 4509, May 18, 1981). In the instant case, however, the effectiveness of the plan instituted by the City Board was not challenged for eighteen years.

Even if the State Board of Education had promulgated and enforced general guidelines on desegregation, the question becomes what would have been the result of any of these policies. To all appearances the School Board of the City of St. Louis had completely disestablished its dual system by 1956. *Brown* v. *Board of Education of Topeka*, 349 U.S. 294 (1955), indicated only that school districts should admit students on a nonracial basis. Further, courts had approved the development of neighborhood attendance zones, the very manner in which the St. Louis City Board had chosen to

meet this Court's mandate under *Brown II*. The fact that racial imbalance might have remained would not have been enough to put any State official on notice that any further action was required. In *Clark* v. *Board of Education of Little Rock School District*, 369 F.2d 661 (8th Cir. 1966), the court acknowledged that the constitutionality of a plan did not depend upon favorable statistics indicating positive integration of the races and approved neighborhood schools. See also *Kemp* v. *Beasley*, 389 F.2d 178 (8th Cir. 1968).

In *Green* v. *County School Board of New Kent County, Virginia*, 391 U.S. 430 (1968), this Court indicated that a school district would have to do more than allow students of one race to attend schools previously designated for the other. The St. Louis City Board, however, had already done much more than that. Even following this Court's opinion in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), a plan almost identical to that adopted by the City Board was approved. *Goss* v. *Board of Education, City of Knoxville, Tennessee*, 340 F.Supp. 711 (E.D.Tenn. 1972), *aff'd* 482 F.2d 1044 (6th Cir. 1973), *cert. den'd* 414 U.S. 1171 (1974). Thus, at least up until the time this lawsuit was filed, there is really nothing to put State officials on notice that the plan adopted by the City Board was ineffective. The evidence in this case indicates that the State of Missouri took the necessary and appropriate steps to remove the legal underpinnings of segregated schooling as well as affirmatively prohibiting such discrimination. The evidence fails to establish that State officers exercised or failed to exercise their authority in a manner inconsistent with constitutional obligations.

The issue of State liability, therefore, resolves itself into a conclusion that because the City School Board was found to have failed to dismantle the dual system, the

State is automatically liable. Because all previous cases which have discussed the issue of State liability have specifically discussed and considered the evidence as it related to State activities either hindering or opposing desegregation, the foregoing basis of State liability stands out as unique. Petitioners submit, therefore, that such a radically new standard of State liability should be considered by this Court.

Assuming *arguendo* that there is some basis for a finding of State liability, the question becomes whether a specific decree ordering the State to fund one-half of the desegregation plan is authorized by such a finding.

Significant State involvement was mound in *Bradley* v. *School Board of City of Richmond, Virginia*, 338 F.Supp. 67 (E.D.Va. 1972). Although that decision was ultimately reversed, *Bradley* v. *School Board of City of Richmond, Virginia*, 462 F.2d 1058 (4th Cir. 1972), *aff'd* 412 U.S. 92, it is interesting to note that in formulating its relief the state officials were simply directed to take certain actions which the district court considered necessary for effective desegregation. There was no blanket assessment of liability for any particular monetary amount. The state and the state officials were left free to determine how best and most effectively to comply with the district court's order.

Petitioners believe that the District Court's order requiring the State to pay one-half of the cost is an unwarranted intrusion upon the State appropriation process. As Mr. Justice Powell noted in *Milliken* v. *Bradley*, 433 U.S. 267, 295 (1977):

> "Ordinarily a federal court's order that a State pay unappropriated funds to a locality would raise the gravest constitutional issues. . . ."

Petitioners believe those issues are raised in this case and that the factual basis which justified the imposition of

the order aganst the State of Michigan simply do not exist in the instant case. Even assuming *arguendo* that there is a basis for State liability the District Court could order the State and State officers as well as the City Board, what they need to do in order to meet their constitutional obligation. This would not necessitate any specific order or provision relating to funding. As the NAACP noted in one of their earlier briefs in this case, "[t]o a large extent, how a state fulfills its constitutional duty is its own business." The petitioners respectfully suggest that State officers are the best judge of how best to meet whatever a court determines to be their constitutional obligations, consistent with all of the other duties which are imposed upon them. For instance, the initial order by the District Court stated that the State funds should come out of the State surplus. At the time that order was entered the State of Missouri did indeed have a surplus. However, that situation changed rather rapidly and the state is now in a serious fiscal situation. Given the situation facing the State of Missouri at the present time, the petitioners believe that the State and its officers are in a better position than the District Court to make a judgment as to how that obligation can best be met.

Obviously the District Court was concerned about the successful implementation of a desegregation plan. However, this concern does not justify the specific order entered by the District Court. In *Evans* v. *Buchanan*, 582 F.2d 750, 779-780 (3rd Cir. 1978), the District Court had also been concerned that state funding would not be adequate to implement the desegregation order. In response, the Court of Appeals stated:

> "Our observation is that this overlooks the critical, and incontrovertible, proposition that any money budgeted by the State to the Northern New Castle

> County school system must be used by the NCCPBE, *first*, to effect the desegregation order, and then to meet the expenses of other programs. Put another way, it is the NCCPBE's responsibility to work with the money it has by attending first to all aspects of the remedial order, and then to other aspects of the school system's expenses. . . ." (Empasis in original).

Petitioners submit, therefore, that even if there is a basis for finding State liability, the District Court exceeded its authority in ordering the State to fund any particular portion of the desegregation plan.

III.

The District Court exceeded its authority in ordering the preparation of a plan of voluntary pupil exchanges between the St. Louis School District and nonparty school districts because (1) an interdistrict violation has neither been pleaded nor proven, and (2) the District Court cannot, consistent with Milliken **v.** Bradley, **order the State of Missouri to fund such a voluntary plan simply on the basis of an intradistrict violation.**

In paragraph 12(a) of its May 21, 1980 order, the District Court required the State defendants, the United States, and the St. Louis Board of Education to:

> "[M]ake every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis. . . ." *Liddell* v. *Board of Education, City of St. Louis,* 491 F.Supp. 351, 353 (E.D.Mo. 1980).

In their application for stay to this Court, the petitioners argued that such an order exceeded the District Court's

authority under *Milliken* v. *Bradley*, 418 U.S. 717 (1974). In the instant case, as in *Milliken*, there has not been a finding of any interdistrict violation involving the school districts of St. Louis County. The present litigaton has simply not been interdistrict in scope. This is rather empathically demonstrated by the fact that it was only in January of 1981, that the City Board and the NAACP sought leave to amend their pleadings, both to add forty additional school districts as parties and to state a claim for interdistrict violations. Throughout the course of this litigation, the general response to the petitioners' assertion that the District Court had exceeded its authority was simply that this was a "voluntary" plan, which could not be enforced. Appendix A at 15.

However, in response to the petitioners' application for stay to this Court, the NAACP stated that the State defendants may be required to participate in this "voluntary" plan. The District Court order of December 19, 1980, provides that the 12(a) plan will be primarily financed by the State. Appendix D. The issue thus becomes whether a finding of an intradistrict violation, by the State of Missouri, if upheld by this Court, can provide the support for an order to bear the costs of a plan of voluntary exchanges. The plaintiffs and the City Board apparently rely upon this Court's opinion in *Hills* v. *Gautreaux*, 425 U.S. 284 (1976) for the proposition that such an order is permissible. The petitioners submit that *Hills* is distinguishable in several significant areas and that the plaintiffs and the City Board have completely misinterpreted its thrust.

With regard to the effect of *Milliken* upon the relief ordered by the Court of Appeals, this Court stated:

> "Nothing in the Milliken decision suggests a per se rule that federal courts lack authority to order parties found to have violated the Constitution to under-

take remedial efforts beyond the municipal boundaries of the city where the violation occurred. . . ." *Id.* at 298.

The petitioners submit, however, that neither is there a per se rule that justifies such a remedial order on the basis of an intradistrict violation even if participation by other governmental units is voluntary. As this Court noted in a footnote to the foregoing statement:

> "Although the State of Michigan had been found to have committed constitutional violations contributing to racial segregation in the Detroit schools, . . . the Court in Milliken concluded that the interdistrict order was a wrongful exercise of judicial power because *prior cases had established that such violations are to be dealt with in terms of 'an established geographich and administrative school system,'* . . ." *Id.* at 298 n.13. (Emphasis added).

Thus, the *Milliken* opinion, as well as that in *Hills*, recognizes that the history of desegregation litigation has established the normal scope of appropriate relief as a single school district and that this may be expanded only on the basis of an interdistrict violation, as defined in *Milliken*.

A further distinction between *Hills* and a school desegregation case, such as we have here, is that the issue is whether or not the remedy exceeds the violation which has been found. The court in *Hills* reaffirmed the principle that federal courts may act only "on the basis of a constitutional violation." *Id.* at 293.

The specific constitutional violation of whch the State of Missouri has, to date, been found guilty is the failure to disestablish its previously mandated dual school system in the City of St. Louis. The disestablishment of a dual school system does not necessitate reaching any particular degree of racial balance in schools. *Swann* v. *Char-*

lotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). The fact that the plan approved by the District Court and affirmed by the Court of Appeals leaves a large number of black children in racially imbalanced schools does not in any sense imply that the intradistrict violation of which the State of Missouri has been found guilty has not in fact been remedied. *Calhoun* v. *Cook*, 525 F.2d 1203 (5th Cir. 1975). In *Hills* this Court concluded that the order against HUD did not exceed the nature of the violation found. There is not evidence to support the conclusion that remaining racial imbalance stems from any constitutional violation by the State of Missouri. The remedy proposed in paragraph 12(a), therefore, far exceeds the nature of the constitutional violation of which the State of Missouri has been found guilty.

Finally, this Court in *Hills* outlined possible forms that relief against HUD could take which would not overstep "the limits of judicial power established in the Milliken case." It should be noted that all of the suggested remedial actions did not entail a restructuring of HUD's activities. In other words, HUD was not ordered to operate in a geographical area it was not otherwise authorized to or to exercise powers which it did not in fact already exercise. The contemplated order would only provide more specific directions as to how HUD should exercise the powers it already possessed.

In the instant case, however, an order that the State of Missouri fund and participate in a voluntary interdistrict transfer plan would involve a major change in State operations. A voluntary plan under paragraph 12(a) of the District Court's order, would impose a major new financial burden upon State operations. As this Court noted in *Hills* the power to restructure the operation of both local and state governmental entities may be exercised only on the basis of a constitutional violation. To the extent that that

restructuring involves interdistrict operations not normally undertaken by the State of Missouri, it can be imposed only on the basis of an interdistrict violation as defined in *Milliken*. Petitioners submit, therefore, that the 12(a) voluntary plan ordered by the District Court far exceeds its permissible authority under both *Milliken* and *Hills*.

IV.

The District Court exceeded its authority and violated Due Process in paragraph 12(b) of its May 21, 1980 Order, in ordering a plan for the consolidation or merger and full desegregation of separate vocational educational programs operated by the Special School District of St. Louis County and the School District of the City of St. Louis because (1) such interdistrict relief was not encompassed within the scope of pleadings, and (2) there was no evidence to support the entry of such an order.

In paragraph 12(b) of its May 21, 1980, Order, the District Court ordered the State defendants, the United States, and the St. Louis Board of Education:

> "To develop and submit to the Court by November 1, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year." *Liddell* v. *Board of Education, City of St. Louis,* 491 F.Supp. 351, 353 (E.D.Mo. 1980).

The only finding underlying this Order was contained in paragraph 17 of the District Court's Findings of Fact and Conclusions of Law entered on June 3, 1980.

> "The existing dual system of vocational education split between the City and St. Louis County is neither educationally sound nor administratively ef-

ficient. These systems, established in 1965 and 1967, are further evidence of the continuing failure of the State to take any effective measures to disestablish the dual system in the State. The State has the power to effectively merge these systems. Its failure to exercise that power is part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated." *Id.* at 358.

Since the petitioners filed their motion for stay of the Court of Appeals mandate in March of this year, the special school district of St. Louis County has engaged in negotiation with other parties and has arrived at a tentative consent decree which provides for the continued separate existence of the special school district but would provide for voluntary joint programs between it and the St. Louis City school system. The District Court did not formally approve the consent decree but entered an order incorporating its basic provisions and providing for funding by the State beyond what it consented to. The Court has, therefore, imposed a mandatory interdistrict remedy. Appendix F.

As initially ordered, paragraph 12(b) of the District Court's Order called for a mandatory interdistrict remedy justified neither by the pleadings nor the evidence up to the time of its entry.

The petitioners asserted on appeal that the entry of this Order was beyond the jurisdiction of the District Court to enter. This argument was effectively ignored by the Court of Appeals in its decision when it stated:

> "Section (b) of paragraph 12 is also consistent with the district court's responsibility to order a remedy for existing constitutional violations. . . . Section (b), therefore, was designed to remedy a violation of the State of Missouri. Moreover, the Special

> District has now been joined as a party defendant in this lawsuit. We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year." Appendix A at 15.

The logical outcome of the Court of Appeals' conclusion is that a federal court has the authority to remedy any constitutional violation which only inferentially arises from a lawsuit, even when the parties have had no notice of any such alleged violation and an opportunity to defend against it. Due process, at the very least, requires the opportunity to be heard at a meaningful time and in a meaningful manner. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972).

Quite apart from the jurisdictional and procedural aspects of 12(b), the Court's finding underlying it was simply incorrect, a fact not surprising since there was no notice that such an issue would be tried by the District Court. The State did not create the special school district. It was created in 1957 by vote of the citizens of St. Louis County for the purpose of providing special education for students in all twenty four school districts of St. Louis County. In 1965, by means of another election, its authority was expanded to include vocational education. Also in 1965 the State Department of Education designated the Special School District, at its request, as an area vocational school. This designation carried with it the ability to receive increased funding but the existence of the Special School District and its ability to operate vocational programs was not in any way contingent upon such a designation.

Throughout this period of time the City of St. Louis had been operating its own vocational program. In 1967 it also sought and received designation as an area school for purposes of increased funding. Again, the authority of the St. Louis City School District to operate its own

vocational programs was not dependent in any way upon this designation. Further, the State does not, contrary to the assertion of the District Court, have the authority to merge these systems. Simply removing the designation as an area school would not have affected the authority of either district to provide vocational education. Further, any attempt to consolidate the two districts would have been a violation of Art. III, § 40(20) of the Missouri Constitution which prohibits the General Assembly from passing any local or special laws "creating new townships or changing the boundaries of townships or school districts; . . ." Thus, neither the pleadings nor the evidence before the District Court justifies the sort of mandatory relief contemplated by paragraph 12(b).

In their earlier motion for stay of the mandate of the Court of Appeals, petitioners noted the possibility that the State of Missouri may be required to fund even a voluntary agreement under 12(b). This possibility has come to pass in view of the events outlined above. However, even assuming that the Special School District of St. Louis County is willing to volunteer for purposes of this program, mandatory participation by the State of Missouri would exceed the jurisdiction of the District Court both for the reason that the specific finding of the District Court relating to vocational educational is neither factually or jurisdictionally proper and for the reason that the general finding against the State of Missouri that it had failed to disestablish its dual school system in the City of St. Louis is an inadequate basis for mandatory funding of a voluntary plan. See argument in the preceding point regarding the 12(a) plan.

V.

The District Court exceeded its authority and violated Due Process in paragraph 12(c) of its May 21, 1980 Order

in which it required the submission of ". . . a suggested plan of interdistrict school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County" because, to date, this litigation has not been inter-district in scope and as a result no evidence has been introduced which would even remotely call for the submission of such a plan.

In paragraph 12(c) of its May 21, 1981 Order, the District Court ordered the State defendants, the United States and the St. Louis Board of Education "to develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County." *Liddell* v. *Board of Education, City of St. Louis*, 491 F.Supp. 351, 353 (E.D.Mo. 1980).

At the present time the reporting and filing dates under this portion of the District Court's Order have been temporarily suspended. However, since this suspension could be lifted at any time, the issue of the validity of 12(c) remains viable.

The petitioners believe that the basic impropriety of paragraph 12(c) is that at the time of its entry and even at the present time, this litigation has not been inter-district in scope. As noted earlier in this petition, it was not until January of 1981 that the City School Board in the NAACP sought leave to amend their pleadings both to add forty additional school districts as party and to state claims for interdistrict violations. To date those motions to amend have not been ruled upon. Since the District Court is requiring the submission of a possible remedy before even hearing the evidence on the existence or nonexistence of a constitutional violation, it would appear

to be a classic case of putting the cart before the horse. It almost goes without saying that an interdistrict remedy must be premised upon an interdistrict violation and that the remedy must fit the scope of the violation. *Milliken* v. *Bradley*, 418 717 (1974). Further, submission of such a plan in advance of any finding of Constitutional violations would compromise the petitioners' right to be heard at a meaningful time and in a meaningful manner. *Fuentes* v. *Shevin*, 407 U.S. 67 (1972).

In its February 13, 1981 Opinion the Court of Appeals stated as follows with regard to paragraph 12(c) of the District Court's Order.

> "[T]o the extent that the segregation was imposed by County school districts which are not parties to the lawsuit and which have not been designated as constitutional violators, it cannot be considered to be 'government-imposed.' But, to the extent that any such segregation was imposed by the State or other defendants, and to the extent that those defendants have the power to remedy the violation, it is proper for the district court to order them to take steps to do so." Appendix A at 16.

Thus, the Court of Appeals is again affirming the power of the District Court to remedy whatever it preceives as constitutional violations. Petitioners believe that they should have notice of such allegations and the opportunity to defend against them. It is very little consolation to the petitioners that paragraph 12(c) requires only the submission and not the implementation of a plan, as has been frequently argued by other parties to this litigation. The fact of the matter is that if the petitioners were to submit any sort of plan, they would in effect have to admit that there are vestiges of State-imposed segregation between the City of St. Louis and

St. Louis County. To *require* a party to make any admissions at all under the guise of a court order, is a clear abuse of judicial authority. In an earlier brief the NAACP urged the Court of Appeals below to put Missouri in its "constitutional place". While the petitioners would not be so blunt about the matter, it is their position that the Court's entry of paragraph 12(c) of its Order, as well as paragraphs 12(a) and 12(b), call out for the exercise of this Court's supervisory authority over the lower federal courts.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Eighth Circuit.

Respectfully submitted,

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June, 1981

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other schoolage children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

Appellants,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens Committee"

United States of America,

Appellee,

v.

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secre-

No. 80-1458

Appeals from the United States District Court for the Eastern District of Missouri.

tary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education.

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand; on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

Appellees,

City of St. Louis,

Appellee,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horce Edington; The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens committee"

United States of America,

Appellee,

v.

No. 80-1494

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L.

Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education.

Appellant.

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

Appellants,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cerdric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela

Reineri, representing the "Involved Citizens Committee"

United States of America,

v.

No. 80-1531

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education,

Appellees.

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

Appellants,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guard-

ian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens Committee"

United States of America,

Appellee,

v.

No. 80-1599

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellee,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education.

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

Appellants,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next

Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens Committee"

United States of America,

Appellee,

v.

No. 80-1735

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Bussee, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education,

Appellees.

Submitted: November 13, 1980

Filed: February 13, 1981

Before HEANEY, BRIGHT and STEPHENSON, Circuit Judges.

HEANEY, Circuit Judge.

We are asked by the State of Missouri and by three groups of parents to set aside the plan of the United States District Court for the Eastern District of Missouri for in-

tegrating the public schools of St. Louis. The State argues that it has been required to pay too much toward the integration plan and that it should not be ordered to participate in developing either a voluntary or an involuntary inter-district integration program. The white parent group complains that the district court plan goes too far and is unfair to white students. The black parent groups assert that the plan doesn't go far enough in that it leaves some schools in North St. Louis all black. All of the appellants assert that the district court erred in failing to find that the United States contributed to the segregation of the St. Louis school district and to require it to pay a substantial portion of the cost of integrating the school system.

We affirm the decision of the district court. The desegregation plan was designed in accordance with the letter and spirit of the mandate of this Court and it meets constitutional requirements. If the plan is fully implemented in the same spirit and with the continuing cooperation of parents, students, teachers and community and religious leaders, a firm foundation will have been laid for affording the children of St. Louis a quality education in a racially neutral school system.

We take judicial notice of the fact that the Board of Education and one of the parent groups have filed amended complaints in the district court, asking the court to require inter-district integration with the schools of St. Louis, St. Charles and Jefferson Counties. We express no opinion as to the merits of the proposed amendments. We do, however, emphasize that the pendency of these petitions must not be permitted to delay the full and complete implementation of every feature of the plan developed by the district court and approved by this Court, including those sections of the plan that relate to inter-district integration.

I.

This case, filed in district court in 1972, is before this Court for the third time.[1] When it was first here, we remanded it with directions to permit the Caldwell parent group to intervene as plaintiffs. *See Liddell* v. *Caldwell*, 546 F.2d 768 (8th Cir. 1976), *cert. denied*, 433 U.S. 914 (1977). When it was next here, we reversed the district court, concluding that the plaintiffs had clearly proven that the defendants had established and maintained a racially segregated school system in violation of the plaintiffs' constitutional rights. *See Adams* v. *United States*, 620 F.2d 1277 (8th Cir.) (en banc), *cert. denied*, 101 S.Ct. 88, 66 L.Ed.2d 29 (1980). We remanded the case to the district court with the following admonition:

> Segregation in the elementary and secondary schools in St. Louis must now be eliminated. An integrated system must be devised and implemented promptly. In no other way can the constitutional right to an equal educational opportunity be assured to all children of St. Louis. With careful planning, expert advice, broad community participation and good faith, a plan to integrate the schools can be devised and implemented which will meet constitutional requirements.

Id. at 1291-1292.

Only one party—the Adams plaintiffs—asked the Supreme Court to review our decision; the Court denied the petition for certiorari.

On remand, the district court made every effort to comply with our charge. It established an interracial citizen's advisory committee to promote community involvement in the proceedings; it appointed Dr. Gary Allen Orfield

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[1]For a detailed account of the procedural history of this case, *see Adams* v. *United States*, 620 F.2d 1277, 1281-1284 (8th Cir.) (en banc), *cert. denied*, 101 S.Ct. 88, 66 L.Ed.2d 29 (1980).

to provide expert assistance in the preparation of a desegregation plan; it held extensive evidentiary hearings on proposed plans and the procedures involved in implementing them; and after a careful consideration of all the evidence, it approved a comprehensive desegregation plan to be effective at the start of the 1980-1981 school year. *See Liddell* v. *Board of Educ.*, 491 F.Supp. 351 (E.D. Mo. 1980).

II.

The plan approved by the district court is a modified form of the "Orfield approach" sanctioned by this Court in the previous appeal. *See Adams* v. *United States, supra,* 620 F.2d at 1293-1296. The essential elements of the plan include (1) reassigning students to achieve the greatest possible number of desegregated schools (defined at 30-50% black); (2) establishing magnet and alternative schools designed to attract students of all races from throughout the St. Louis area; (3) organizing a middle school system to facilitate clustering, pairing and other integrative efforts; (4) instituting and expanding specialty and part-time integrated programs; (5) facilitating permissive integrative transfers; (6) initiating cooperative inter-district desegregation programs; (7) providing for integration of and special training for school personnel; and (8) developing a comprehensive community relations program.

Although the plan reflects the fact that it is not possible to fully integrate every school in the St. Louis system, the district court faithfully followed the directions of this Court by providing a variety of integrative experiences and enhanced educational opportunities for students remaining in the predominately black schools.

The district court estimated that the overall cost of the desegregation plan would be approximately $22.1 million. The court directed the State of Missouri to pay one-half of the actual cost of desegregation. To finance the remaining

50%, the court ordered the Board of Education to transfer approximately $4.7 million out of its debt retirement account, noting that federal funds would cover the balance. Federal funding to assist in the integration process exceeded $7 million for the 1980-1981 school year.

III.

Four parties—the Liddell plaintiffs, the Caldwell plaintiffs, the Adams plaintiffs, and the State of Missouri defendants[2]—appeal from the district court's order approving the desegregation plan. For convenience, the issues on appeal may be divided into two categories: those relating to the design of the plan and those relating to the financing of the plan. We first consider the challenges to the design of the plan.

A. *Design*

1. The Liddell and Caldwell plaintiffs contend that the plan approved by the district court is constitutionally deficient because it does not go far enough to remedy the effects of the defendants' discriminatory practices. Specifically, they argue that the district court erred in holding that schools with 30-50% black enrollments were to be considered integrated. Their position appears to be that the only constitutionally permissible means of integrating the St. Louis system was to reassign students so that each school had the same racial mix as the district as a whole—approximately 76% black and 24% white.

We cannot agree that the options available to the district court were so limited. In our decision of March 3, 1980,

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[2]The "State defendants" include the State of Missouri and its Board of Education, as well as the following Missouri officials: the Governor, the Attorney General, the Treasurer, the Commissioner of Education, the Commissioner of Administration, and the individual members of the Missouri Board of Education. Because their interests are identical and they have filed a joint brief, we refer to these parties collectively as the State of Missouri.

we specifically stated that a plan similar to the one adopted by the district court would meet constitutional requirements. In so doing, we accepted the testimony of Dr. Orfield that such a plan would have the best chance of successfully integrating the St. Louis schools and stabilizing neighborhoods already integrated.

In affirming this aspect of the plan, we emphasize that students remaining in the predominately black schools in St. Louis are not left completely untouched by the new system. Provisions affecting the remaining black schools include magnet and alternative programs, new and expanded specialty programs, permissive intra-district transfers, staff desegregation, staff development, a City/County integrated vocational program, and voluntary pupil exchanges with suburban school districts. We also emphasize that the plan requires the Board of Education to spend a substantial portion of the $22 million desegregation budget to improve the quality of education in those schools that remain all black and continuing expenditures are required for this purpose. Moreover, although a number of all-black or virtually all-black schools remain in St. Louis under the plan, the new system does eliminate the all-white schools from the district. Thus, although the degree of actual integration achieved under the plan is not optimal, we reiterate our view that under all the circumstances, the plan is a constitutional one and has a better chance of providing a quality integrated education for the school children of St. Louis than any of the other plans that were presented by the parties to this lawsuit.[3]

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[3]We note that the plan approved by the district court appears to permit up to a 15% deviation from the 30-50% black guideline used to define integrated schools. In our view, a deviation of this magnitude should be permitted only rarely and then only after the court has determined, following a hearing in which the parties are given an opportunity to present their views, that allowing the variance will not impair the overall effectiveness of the desegregation plan.

2. In contrast with the position of the Liddell and Caldwell plaintiffs, the Adams plaintiffs argue that the district court has gone too far in the intra-district pupil reassignment portion of its plan.[4] They note that the Court has included in the reassignment plan a number of schools that were between 30 and 50% black prior to desegregation. These schools, they contend, should not have been required to participate in the plan in view of this Court's determination that the boundary lines and assignment patterns for schools with 30-50% black enrollments should remain substantially changed.

This contention is without merit. Although reassignment does affect some schools that had a pre-plan enrollment of 30-50% black, we are satisfied that their inclusion does not violate our order of March 3, 1980. First, it turned out to be necessary to include some of these schools to accommodate the change from a two-tier (kindergarten-8; 9-12) to a three-tier (kindergarten-5; 6-8; 9-12) system, a change that was designed to help facilitate clustering and other integrative efforts and to improve the overall educational opportunities in St. Louis. Second, it appears from the record that many of the schools cited by the appellant as having a pre-plan black population of between 30 and 50% had such a racial mix because students were transported to them, not because the neighborhoods surrounding the schools were integrated. Still other schools were included because their black enrollment percentage has increased rapidly in recent years, indicating that their black population would be likely to exceed 50% in the near future. When read in context, it is clear that our decision of March 3

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[4]The Adams group also claims that the Board of Education relied onfalse enrollment and other data in developing the plan. Although there may be minor discrepancies in some of the figures, we find no support in the record for the appellants' position that the information relied upon was so inaccurate that the plan must be invalidated.

was intended to minimize the transportation of students and to encourage the development and maintenance of integrated schools in integrated neighborhoods. In our view, the plan approved by the district court is faithful to this concept.

3. The State of Missouri is the sole challenger to paragraph 12 of the district court's order, which provides for various forms of inter-district relief. The State argues that the district court is without authority to order the preparation of any inter-district plan unless and until the suburban districts are joined as parties to the lawsuit. The Adams group, by contrast, argues that the court erred in not developing a more comprehensive inter-district remedy.

Paragraph 12 of the district court's order provides in part:

> 12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:
>
> a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.
>
> b) To develop and submit to the Court by November 1, 1980, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school

district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of goverment-imposed school segregation in the City of St. Louis and St. Louis County.

491 F.Supp. at 353.

The appellees contend that this Court should not hear the State's challenge at this time because the directives contained in paragraph 12 are neither final judgments appealabe under 28 U.S.C. § 1291 nor orders granting or denying injunctive relief appealable under 28 U.S.C. § 1292. Although the line between appealable and nonappealable orders is rarely clear in a case in which the district court retains jurisdiction over a developing desegregation plan, we are persuaded that we have jurisdiction over these issues in this appeal.[5] Accordingly, we consider the challenge to paragraph 12 on the merits, examining each section of the paragraph separately.

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[5]In support of their position that the provisions of paragraph 12 are nonappealable, the appellees cite to cases in which appeals courts ruled that orders directing school boards to formulate desegregation plans were nonappealable. *See Bradley* v. *Milliken*, 468 F.2d 902 (6th Cir.), *cert. denied*, 409 U.S. 844 (1972); *Taylor* v. *Board of Educ.*, 288 F.2d 600 (2d Cir 1961) The State of Missouri distinguishes the cases cited by the appellees by noting that the school board in each of those cases was ordered to prepare a remedy consistent with its judicially determined constitutional liability Here, the State argues, the district court exceeded its jurisdiction by ordering the parties to prepare a plan involving other school districts, even though it is conceded that the suburban districts cannot be considered to be constitutional violators unless and until they are joined as parties to the litigation. While the question is not free from doubt, we are satisfied that we have jurisdiction to hear an appeal from a remedial order that, on its face, arguably involves potential parties who have not yet had their day in court.

Section (a) of paragraph 12 directs the parties to "make every feasible effort" to work out a voluntary plan of inter-district pupil exchanges to be implemented in the 1980-1981 school year. Because the plan is to be voluntary, no question is raised about whether the district court will be able to enforce the plan once it is drawn up. Under the terms of the order, the plan is to be designed to "assist in alleviating the school segregation in the City of St. Louis [and to ensure] that inter-district pupil transfers will not impair the desegregation of the St. Louis school district." 491 F.Supp. at 353. Thus, the voluntary exchanges contemplated by section (a) must be viewed as a valid part of the attempt to fashion a workable remedy within the City.

Section (b) of paragraph 12 is also consistent with the district court's responsibility to order a remedy for existing constitutional violations. The district court specifically found that the State of Missouri's establishment and maintenance of the separate Special District for vocational education was "part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated." 491 F.Supp. at 358. Section (b), therefore, was designed to remedy a violation of the State of Missouri. Moreover, the Special District has now been joined as a party defendant in this lawsuit. We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year.

Section (c) of paragraph 12 is also within the authority of the district court. By its terms, that section required the parties to develop and submit to the court by November 15, 1980, a "suggested" inter-district plan "to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County." We must read the term "government-imposed" to mean

"found to be government-imposed by a court." Therefore, to the extent that the segregation was imposed by County school districts which are not parties to the lawsuit and which have not been designated as constitutional violators, it cannot be considered to be "government-imposed." But, to the extent any such segregation was imposed by the State or other defendants, and to the extent those defendants have the power to remedy the violation, it is proper for the district court to order them to take steps to do so.

Furthermore, we recognize that the Board of Education and the Caldwell plaintiffs have petitioned the district court to amend their complaints to add as parties defendant the school districts in the three-county area surrounding the City of St. Louis. We express no opinion on the merits of those motions, but we emphasize that the current parties have a responsibility to comply with the terms of the district court order, including the provisions of paragraph 12, regardless of the disposition of the motions pending before the district court.[6]

4. The Adams and the Liddell plaintiffs maintain that the district court erred in approving the personnel assignment portion of the desegregation plan. Both appellants oppose the court's adoption of a "Singleton" plan of personnel assignment, which provides that the black to white staff ratio in each school is to be substantially equal to the district-wide black to white staff ratio. They argue that the Singleton formula is inconsistent with the following directive of this Court: "The consent decree, insofar as it

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[6]We note that the district court has found it necessary to extend the deadlines for filing the proposed plans under pargaraph 12(a)-(c) and that it is apparently having some difficulty in getting complete and adequate proposals from the parties. We take this opportunity to stress the legal obligation of the State of Missouri, the United States and the Board of Education to develop and implement the plans contemplated by paragraph 12. It is imperative that the district court countenance no excuse for further delay.

pertains to faculty integration, shall be fully implemented and additional steps taken to ensure that school personnel at every level will be integrated." *Adams* v. *United States, supra,* 620 F.2d at 1297. In our view, the plan approved by the district court goes beyond what we required, at least with respect to classroom teachers. We will not quarrel with that decision.

The Liddell and Adams groups argue that the personnel integration provision of the plan is inadequate because it fails to integrate the administrative staff. The district court's order provided that a Singleton assignment formula should apply to "[a]ll principals, teachers, and other certified staff who work directly with children at a school." 491 F.2d at 354. The court also stated, "The same criteria shall apply to non-certificated personnel." *Id.* We read these statements to provide that the Singleton assignment scheme is to apply to *all* principals, *all* teachers and *all* non-certificated personnel, as well as to certificated staff members who work directly with children. It appears that nothing is said about administrators other than principals. That is not surprising, inasmuch as the Singleton approach matches district-wide race ratios with staff ratios at each school. There is no way, therefore, to apply that formula directly to administrators who are not assigned to specific schools. We assume that as to such personnel, the prior directive of this Court will be followed, and are confident that if that phase of the plan has not yet been implemented, it will be by the opening of the 1981-1982 school year.

5. The Adams and Liddell plaintiffs also join in challenging the manner in which the burdens of desegregation are distributed among the students. The Adams group contends that the burdens are borne disproportionately by the white students, while the Liddell group asserts that the black students suffer the greatest adverse effects under the plan.

We find no support in the record for either of these positions. The Adams appellants base their argument on the fact that slightly over one-half of the students transported to schools out of their neighborhoods are white even though white students comprise only 24% of the school population. In our view, that is not sufficient to show that the white students bears a disproportionate burden. In a situation such as that in St. Louis, where it is necessary to exchange black students with white students in order to integrate the schools, the number of whites who are transported will almost necessarily be approximately equal to the number of blacks who are similarly transported. Under these circumstances, the percentage of each race transported is not controlling.

The Adams group also argues that the black students reap a disproportionate amount of the benefits from the plan. That assertion simply has no support in the record.

The basis of the Liddell group's challenge is essentially that some black children remain in predominately black schools under the plan.[7] We have answered that complaint earlier in this opinion.

6. The Caldwell group raises two issues concerning the composition and operation of the citizens' committees appointed by the district court. In our March 3 opinion, we stated,

> The Board of Education is to be given the principal responsibility for developing and implementing a comprehensive plan to integrate the school system. In ful-

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[7]The Liddell plaintiffs also assert that the district court violated this Court's mandate by failing to establish an educational park in the City of St. Louis. In our March 3 opinion, we did refer to an educational park as one possible method of providing enhanced educational opportunities for St. Louis students. We did not, however, require the district court to establish such a park.

> filling this responsibility, the Board shall work with the parties of this lawsuit, a broadly based interracial committee to be named by the district court and an expert, or experts, to be named by the district court.

Adams v. *United States, supra,* 620 F.2d at 1295 (footnote omitted).

In accordance with this directive, the district court appointed a twenty-member bi-racial "Citizens' Committee" to assist the Board of Education in developing the desegregation plan. The members of the Citizens' Committee were chosen from lists provided by the parties; four of the twenty members were selected from the list submitted by the Caldwell plaintiffs. Following approval of the plan, the court disbanded the Citizens' Committee and adopted a new "Desegregation Monitoring and Advisory Committee." The new group was composed of twelve members, one-half of whom were members of the original Citizens' Committee.

The Caldwell plaintiffs assert that they are not adequately represented on this new committee. The record shows, however, that two of the twelve Monitoring Committee members, including the vice chairperson, were originally nominated for the Citizens' Committee by the Caldwell group. It also shows that six of the twelve members on the Monitoring Committee are black. In light of these facts, no abuse of discretion has been demonstrated.

The Caldwell appellants' second objection to the Monitoring Committee is that the district court erred in expressly authorizing *ex parte,* oral communication between the court and the Monitoring Committee chairperson and vice chairperson. We agree that all parties are entitled to know of the advice given the court by the Committee. *See Bradley* v. *Milliken,* 620 F.2d 1143, 1156-1158 (6th Cir.), *cert. denied,* 101 S.Ct. 207, 66 L.Ed.2d 80 (1980). The best practice would be to reduce to writing all communications between the

court and the Committee, make them part of the record, and provide them to counsel for the parties. If oral contact is deemed necessary by the district court, the parties should, where possible, be given notice and opportunity to be present when the oral report is received. To this point, however, no prejudice has been shown from any alleged *ex parte* contacts.

B. *Financing*

1. All four of the appellants join in mounting the primary challenge to the financing of the desegregation plan, arguing that the district court erred in failing to directly order relief against the United States government.[8]

In support of their position, the appellants point to evidence in the record, as well as to statements of the district court and this Court, indicating that the policies and practices of the federal government have been a significant cause of segregation in the St. Louis school system. The

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[8]The claims of the Caldwell appellants go beyond the financial liability of the United States. They maintain that the government should be required to take affirmative steps to reverse the discriminatory effects of federal housing and other policies. This issue has not been tried in this lawsuit. Accordingly, the district court did not err in refusing to grant affirmative relief against the United States.

We note in passing that the district court has taken steps to ensure that federally assisted housing programs are operated so as to aid in the implementation of school desegregation in St. Louis. In paragraph 12(d) of its order, the district court directed the State defendants, the United States and the St. Louis Board of Education

> [t]o develop and submit to the Court by November 1, 1980, in conjunction with the Community Development Agency of the City of St. Louis, a suggested plan for insuring that the operation of federally-assisted housing programs in the St. Louis metropolitan area will facilitate the school desegregation ordered herein.

491 F.Supp. at 354.

No party has challenged this aspect of the district court's order. The parties have submitted plans in accordance with the order, and we approve of this effort to facilitate implementation of the overall desegregation plan.

fact remains, however, that no party has named the United States as a defendant and alleged that it engaged in discriminatory practices.[9] The real question, therefore, is whether the district court abused its discretion in refusing to grant the Caldwell plaintiffs' motion to amend its complaint to seek relief against the United States.

Under all the circumstances of this case, we find no abuse of discretion. The Caldwell plaintiffs' motion to amend was filed on May 23, 1980, one week after the district court concluded evidentiary hearings on the proposed desegregation plans. At that time, the district court was operating under a stringent time schedule, mandated by this Court, requiring that the plan be implemented by the beginning of the 1980-1981 school year. Given this need to expedite approval and implementation of the plan and the likely delay attendant in adding new theories of liability against a new defendant, we hold that the district court did not abuse its discretion in refusing to grant the Caldwell group's motion to amend at that time.

In affirming the district court's refusal to grant relief against the United States, we are mindful of the significant financial role played by the federal government in implementing the St. Louis desegregation plan. In its order approving the plan, the district court expressly recognized that a substantial portion of the funding for integration would come from the United States government. The court directed the United States Department of Education to expedite the processing of funding applications for St. Louis under the Emergency School Aid Act (ESAA), 20 U.S.C.

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[9]The Adams plaintiffs did name the United States as a defendant in its complaint in intervention. Rather than complain of the government's segregative acts, however, the Adams group alleged that the United States illegally required the St. Louis school district to take steps to desegregate the schools as a condition to release of federal funds for the district.

§ 3191 *et seq.* Apparently, this direction was heeded since the St. Louis school system received over $7 million in ESAA funds—nearly one-third of the desegregation budget—to cover the costs of implementing the plan during the 1980-1981 school year. Moreover, the evidence in the record gives us no reason to believe that similar funding will not be available to continue implementation of the plan for the foreseeable future. Under these circumstances, we are unwilling to hold that the district court erred by failing to expressly order the United States to pay for part of the desegregation plan.

2. The State of Missouri vigorously contends that it should have no part in paying for the costs of integration because its actions did not violate the Constitution. More precisely, the State argues that this Court did not overrule the district court's earlier finding of non-liability on the part of the State. Thus, the State asserts, the district court was precluded on remand from finding the State to be a constitutional violator.

This contention is wholly without merit. In our March 3 opinion, we specifically recognized the causal relationship between the actions of the State of Missouri and the segregation existing in the St. Louis school system. Furthermore, we expressly directed the district court to apportion the costs of the desegregation plan among the defendants. *Adams* v. *United States, supra,* 620 F.2d at 1295 n.28. These statements amount to a clear reversal of the district court's findings concerning the liability of the State, and the State has chosen not to seek review of that decision in the Supreme Court. At the very least, our opinion left the district court free to review its earlier conclusions. We will not disturb its decision to do so.

3. As an alternative argument, the State contends that, even if it was proper to require it to fund part of the plan, it has been ordered to pay too great a share. The State

maintains that the amount it has been ordered to pay is not commensurate with the degree of its constitutional violation. In addition, it argues that the desegregation plan budget is inflated and that the State's portion of the funding is too great as a result. We agree with neither contention.

After reviewing the discreminatory action and inaction of the State of Missouri, the district court concluded that "the State defendants stand before this Court as primary constitutional wrongdoers who have abdicated their affirmative remedial duty." 491 F.Supp. at 359. This conclusion has ample support in the record; as noted, we recognized as much in the prior appeal. It was well within the discretion of the district court, therefore, to order the State to pay one-half of the costs of integrating the St. Louis school system.

The State's complaints about the desegregation plan budget are that it includes items that are not properly considered part of the integration process and that certain savings were not taken into account. We need not review the specific items in the plan budget, however, because it is clear that the approved budget is only an estimate of the expected costs of implementing the plan. The district court's order requires the State to pay one-half of the *actual* costs of implementing the desegregation plan; the budget is used only to set a ceiling on the amount of the State's participation. In addition, the district court specifically directed that "continued efforts be made to reduce the actual costs of implementation." 491 F.Supp. at 352[10]

[10]Like the State of Missouri, the Aadms appellants contest the validity of the budget on the ground that it includes items not necessary for integration. Inexplicably, the Adams group also takes the seemingly inconsistent position that the amount allocated by the budget is insufficient to desegregate the St. Louis schools. For the reasons stated in the text, we need not decide the validity of these challenges to the budget.

4. The Adams' plaintiffs contend that the district court erred in directing the Board of Education to transfer approximately $4.6 million in excess funds from its debt retirement account to be used to make the building modifications necessitated by the desegregation plan. This complaint is based on the assertion that the Board of Education was without authority under Missouri law to collect surplus funds in the account reserved for the retirement of bonds. The Board of Education responds that the money in the debt retirement account was collected in accordance with statutory guidelines following annual public hearings, and that no one has complained of the accumulated surplus prior to this time.

We decline to rule on whether Missouri law authorized the Board of Education to accumulate funds in its debt retirement account. This is surely not the most suitable forum for determining the propriety of the Board of Education's bond issues. We are satisfied that the district court had discretion to order the transfer of funds already collected and held by the Board.

To summarize, we affirm the judgment of the district court and commend it for the manner and promptness with which it implemented the earlier decision of this Court. We remand the matter to the district court with directions to continue with the implementation of its plan in accordance with the slight modifications made by this opinion. All parties will bear their own costs in this appeal.

A true copy.

Attest:

CLERK,

U. S. COURT OF APPEALS,

EIGHTH CIRCUIT.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other schoolage children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

Appellants,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens Committee"

United States of America,

Appellee,

v.

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secre-

No. 80-1458
Appeals from the United States District Court for the Eastern District of Missouri.

tary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education.

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand; on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

Appellees,

City of St. Louis,

Appellee,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horce Edington; The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens committee"

United States of America,

Appellee,

v.

No. 80-1494

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L.

Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education.

Appellant.

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

Appellants,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cerdric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela

Reineri, representing the "Involved Citizens Committee"

United States of America,

v.

No. 80-1531

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education,

Appellees,

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

Appellants,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guard-

ian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens Committee"

United States of America,

Appellee,

v.

No. 80-1599

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Busse, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellee,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education.

Craton Liddell, a Minor, by Minnie Liddell, his Mother and Next Friend, and Minnie Liddell; Joanna Goldsby, a Minor, by Barbara Goldsby, her Mother and Next Friend, and Barbara Goldsby; Deborah Yarber, a Minor, by Samuel Yarber, her Father and Next Friend, and Samuel Yarber; Nathalie Moore, a Minor, by Louise Moore, her Mother and Next Friend, and Louise Moore; Rachelle LeGrand, a Minor, by Lois LeGrand, her Mother and Next Friend, and Lois LeGrand, on behalf of themselves and all other school-age children and their parents residing in the metropolitan school district of the City of St. Louis, Missouri,

and

Earline Caldwell, Lillie Caldwell, Denise Daniels, Dwane Daniels, Gwendolyn Daniels, Cedric Williams, Stephanie Williams, Gloria Williams, Janis Hutcherson, Lee Hutcherson, Robert Smith, Eddie S. Willis and the National Association for the Advancement of Colored People,

Appellants,

City of St. Louis,

Janice Adams and Jack Adams, Jr., Minors, by Jerrianne Adams, their Natural Guardian and Next

Friend, and Jerrianne Adams; Catherine M. Neel and Camille A. Neel, Minors, by Catherine Neel, their Natural Guardian and Next Friend, and Catherine Neel; Mary Edington and Susan Edington, Minors, by Horace Edington, their Natural Guardian and Next Friend, and Horace Edington, The Concerned Parents for Neighborhood Schools,

and

Mary Puleo, Gerard Puleo, Emma Dannenberg, Robin Dannenberg, Louis Reineri and Mary Anjela Reineri, representing the "Involved Citizens Committee"

United States of America,

Appellee,

v.

No. 80-1735

Board of Education of the City of St. Louis and Daniel L. Schlafly, Frederick E. Bussee, Gordon L. Benson, Malcolm W. Martin, Mrs. Anita L. Bond, Mrs. Joyce Bowen, Henry M. Grich, Jr. (Secretary), Rev. James L. Cummings (President), Mrs. Erma J. Lawrence, Rev. Donald E. Mayer (Vice President), Lawrence Moser, Charles Harris, and Julius C. Dix, Benjamin M. Price, Robert W. Bernthal, David J. Mahan, Charles Brasfield (School District Superintendent) and Robert E. Wentz (Superintendent of Schools),

Appellees,

and

The State of Missouri, Arthur Mallory, Commissioner of Education of the State of Missouri, The State of Missouri Board of Education,

Appellees.

Filed: March 19, 1981

Before HEANEY, BRIGHT and STEPHENSON, Circuit Judges.

ORDER

This Court has before it a number of motions relating to the above entitled case.

I.

The motion of the Special School District of St. Louis County, Missouri, to intervene on appeal for the purpose of filing a petition for rehearing or rehearing en banc is granted. The petition for rehearing or rehearing en banc is denied, the latter by a unanimous vote of the Court.

The Special School District asks us to review our decision of February 13, 1981, asserting that that decision is inconsistent with an August 15, 1980, order of this Court which denied the Special District's petition for a writ of prohibition.

We do not agree. The primary issue addressed by this Court in its August 15 ruling was whether the Special District would be provided with a full and fair opportunity to present its views to the district court prior to being ordered to remedy its constitutional violations, if any.

The district court correctly perceived the thrust of our August 15 ruling. In a December 19, 1980, order denying the Special District's motion to disqualify him from further proceedings in the case, Judge Meredith declared, "The Special District can rest assured that before any action is taken that would affect it, it will have ample opportunity to be heard." Similarly, in an order dated March 4, 1981, Judge Hungate reiterated the view that voluntary cooperative efforts with the School District of the City of St. Louis would result in no prejudice to the legal rights of the Special District:

> This Court emphasizes that a 12(b) *plan* has merely been filed with the Court as required by Judge Meredith's order of May 21, 1980. No action has or will be taken until a hearing has been held during which the [Special District] will have ample opportunity to be heard. [Emphasis included.]

Judge Hungate has now set May 11, 1981, as the hearing date for questions involving the Special District, and he has established a discovery and briefing schedule designed to facilitate resolution of the issues and provide the parties with full opportunity to be heard. We express no opinion as to the merits of the issues to be heard by Judge Hungate.

II.

The Caldwell plaintiffs petition this Court for rehearing, modiciation and/or clarification of this Court's decision of February 13, 1981. They ask this Court to modify its February 13, 1981, opinion "to reflect the fact that paragraph 12(c) of Judge Meredith's order of 21 May 1980 was amended by him on 17 September 1980, and that proceedings now pending in the district court may moot the controversy over paragraph 12(c)."

In subdivision III of this order, we have denied the State of Missouri's motion for a stay of mandate or stay of enforcement of the district court's paragraph 12 orders. In that subdivision, we acknowledge the amendments made by the district court; we see no need to further modify our opinion of February 13, 1981. There is nothing inconsistent about paragraphs 12(a) and 12(c), and both are valid parts of the district court's order. We additionally acknowledge the protective orders entered by Judge Meredith on June 17, 1980, and October 6, 1980, were extended by Judge Hungate on March 4, 1981, and note our concurrence therewith.[1]

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[1]In essence, these protective orders provide that any form of voluntary cooperation by the parties or County school districts will not be used as evidence in pending district court proceedings or otherwise prejudice the legal rights of any party or County school district to resist judicial imposition of compulsory inter-district remedy.

The Caldwell plaintiffs also ask this Court to clarify its decision on the allocation of costs on appeal or, in the alternative, to grant a rehearing and direct that "the costs on appeal, including attorneys' fees, be awarded against the State and St. Louis Board defendants in their favor. We decline to attempt to restate our original intentions concerning costs. Prior to the filing of this petition, the Caldwell plaintiffs made no application for attorneys' fees. We construe this petition, however, as a request for a ruling on whether they are entitled to attorneys' fees. We hold that they are not.

III.

On February 19, 1981, the State of Missouri[2] filed a motion requesting this Court to "stay the issuance of its mandate * * * as well as the enforcement of paragraphs 12(a), (b), and (c) of the May 21, 1980 Order of the District Court * * *, including the [district court's December 19, 1980,] supplementary order pertaining thereto . . . ," pending the filing of a petition for a writ of certiorari in the United States Supreme Court. *See* Fed.R.App.P. 41(b). We deny the motion to stay our mandate or to stay enforcement of the district court's orders and adhere to our most recent pronouncement concerning the State's legal responsibilities for the prompt desegregation of the St. Louis public school system. *See Liddell* v. *Board of Educ.*, Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735, slip op. at 17-20, 27-29 (8th Cir. Feb. 13, 1981).

On March 3, 1980, this Court reversed the district court's determination that the various defendants in this litigation committed no constitutional violations in the

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[2]For a complete listing of the state defendant-appellants in this litigation, *see Liddell* v. *Board of Educ.*, *Nos.* 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735, slip op. at 13 n.2 (8th Cir. Feb. 13, 1981).

formation and perpetuation of the admittedly segregated St. Louis public school system. *Adams* v. *United States*, 620 F.2d 1277 (8th Cir.)(en banc), *cert. denied*, 101 S.Ct. 88 (1980). At that time, we specifically noted that the State of Missouri, the Missouri Commissioner of Education and the Missouri Board of Education were added as defendants pursuant to various district court orders in the summer of 1977. *Id.* at 1283. Moreover, we recognized that actions of the State of Missouri intensified racial segregation in North St. Louis and in the entire St. Louis area. *Id.* at 1291, 1294 n.27. The state defendant-appellants did not seek Supreme Court review of our Adams' decision.[3]

We remanded the case for further district court proceedings. Upon remand, the district court held that the State defendants are "primarily constitutional wrongdoers who have abdicated their affirmative remedial duty" concerning the segregated St. Louis public school system. *Liddell* v. *Board of Educ.*, 491 F.Supp. 351, 359 (E.D. Mo. 1980). On February 13, 1981, we affirmed that determination and endorsed the desegregation plan adopted by the district court, including the provisions of paragraph 12. *Liddell* v. *Board of Educ.*, Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735, slip op. at 28-29 (8th Cir. Feb. 13, 1981).[4]

The district court amended paragraph 12 on September 17, 1980, and December 19, 1980. Unfortunately, these amendments were not included in the record submitted to this Court prior to our February 13, 1981, decision. Therefore, our February 13, 1981, decision does not discuss the district court's two amended orders. We are convinced,

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[3]Only one party—the Adams' plaintiffs—asked the Supreme Court to review our decision; the Court denied the petition for certiorari.

[4]We also affirmed the district court's determination that the State of Missouri must pay one-half of the actual costs of implementing a constitutionally required desegregation plan for the St. Louis public school system.

however, that these amendments do not alter the substance of original paragraph 12. Accordingly, we find it unnecessary to amend our February 13, 1981, decision to reflect the district court's September 17, 1980, and December 19, 1980, amendments. As amended, paragraphs 12(a)-(c) provide:[5]

> 12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:
>
> a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by *December 15, 1980.*
>
> *The State defendants, the United States, and the St. Louis Board of Education are ordered to develop a closer and more efficient cooperation among themselves for the pursuit of the objective hereof. In particular, they are directed to establish close liaison procedures and prepare co*ncrete

---

[5]We note that the State of Missouri has filed a notice of appeal from the December 19, 1980, order of the district court. While we express no opinion on the merits of that appeal, we emphasize that its pendency does not relieve the parties of their responsibility to fully follow the orders of the district court.

In the quotation in the text, the amendments to paragraph 12 made by the September 17, 1980, order of the district court are indicated in italics. The amendments made by the December 19, 1980, order are underlined.

and specific proposals involving the county school districts and evaluate all other reasonable proposals, including any from county districts, and intensify their joint efforts. While the results disclosed in the Updating Report of the St. Louis Board of Education of September 11, 1980 are encouraging and represent some tangible achievements, a great deal more should be accomplished.

One of the subjects to be considered for voluntary cooperation between the City and the suburban school districts, shall be the study of the feasibility of establishing magnet schools located in suburban districts with attendance open to students of both the suburbs and the City. Consideration may be given to the expansion beyond the boundaries of St. Louis County into St. Charles and Jefferson Counties subject to limits of distance and practicality. The location of these magnet schools should be determined by agreement between the St. Louis Board of Education and the suburban school districts involved. The State and the St. Louis Board of Education will investigate the availability of funding for this program. A joint report on the status and results including the availability of technical assistance and funding of this effort should be given to the Court by the United States, the State defendants, and the St. Louis Board of Education on December 15, 1980.

Pursuant to [this] paragraph * * *, the State of Missouri and particularly the State Board of Education and the Commissioner of Education of the State of Missouri shall submit a new Plan of voluntary and cooperative desegregation on or be-

fore February 2, 1981. The plan shall encompass each district within St. Louis County. Jefferson and St. Charles Counties shall also be included for use of magnet schools to be located in St. Louis City and County.

The State of Missouri shall report back to the Court on March 2, 1981 as to those districts in St. Louis County, Jefferson and St. Charles Counties that are willing to participate in the plan and those that are not willing to participate in the plan. The report of March 2, 1981 shall include the number of students that each district is willing to receive and those that they desire to send outside of their district, either to magnet schools in the County or in the City of St. Louis, including the race and grade of those students.

b) To develop and submit to the Court by *December 15, 1980*, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

On or before February 16, 1981 the State defendants and the St. Louis Board of Education shall prepare and submit to the Court a feasibility plan of inter-district school desegregation involv-

ing the St. Louis school district and such suburban school districts, that will provide complete and lasting school desegregation. These considerations may apply to those suburban school districts which are not necessarily confined to the suburban districts located in St. Louis County but limited only by considerations of feasibility and practicality, including reasonableness of transportation times and distances. This feasibility plan should include educational and ancillary components such as those outlined in the Court of Appeals' opinion of March 3, 1980 in this case, and should specifically include pupil assignment and administrative reorganization provisions.

The State's motion does not persuade us to stay our February 13, 1981, mandate. Moreover, we are satisfied that the provisions of paragraph 12, both as originally written and as amended, must be enforced. The State's motion does not raise any new issues. Indeed, we previously considered and rejected the very concerns presented in its stay motion. *See Liddell* v. *Board of Educ.*, Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735, slip op. at 19-20 (8th Cir. Feb. 13, 1981). In our February 13, 1981 opinion, we stressed that the State of Missouri, who has been judicially determined to be a primary constitutional violator, may properly be ordered to take steps within its power to remedy those violations. *Id.* at 20. Paragraphs 12(a)-(c) of the district court's order are salutory remedial directives and are entirely enforceable against the State in the present procedural posture of this lengthy and complicated litigation.

The State of Missouri's motion is denied. We order prompt implementation of our mandate in *Liddell* v. *Board*

of Educ., Nos. 80-1458, 80-1494, 80-1531, 80-1599 & 80-1735 (8th Cir. Feb. 13, 1981).

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX C

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

CRATON LIDDELL, et al., *Plaintiffs,* v. THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al., *Defendants.*	No. 72-100-C (C)

ORDER

The Court held two meetings with all counsel, on September 12, 1980 and on September 17, 1980, to discuss the questions raised about the interpretation of paragraph 12 of the Order of May 21, 1980, and certain problems which have arisen in connection therewith. It appears to the Court that it is highly important that the efforts of the United States, the State, and the St. Louis Board of Education, heretofore developed with the cooperation of county school districts should be continued and intensified. This and other considerations indicate the advisability of changing timetables and certain aspects of the parties' participation in some of the programs which are the subject of subparagraphs (a) through (d) of paragraph 12.

IT IS THEREFORE ORDERED that:

1. (a) Paragraph 12(a) is hereby amended by changing the date of July 1, 1980 to December 15, 1980, and adding thereafter the following: The State defendants, the

United States, and the St. Louis Board of Education are ordered to develop a closer and more efficient cooperation among themselves for the pursuit of the objective hereof. In particular, they are directed to establish close liaison procedures and prepare concrete and specific proposals involving the county school districts and evaluate all other reasonable proposals, including any from county districts, and intensify their joint efforts. While the results disclosed in the Updating Report of the St. Louis Board of Education of September 11, 1980 are encouraging and represent some tangible achievements, a great deal more should be accomplished.

(b) One of the subjects to be considered for voluntary cooperation between the City and the suburban school districts, shall be the study of the feasibility of establishing magnet schools located in suburban districts with attendance open to students of both the suburbs and the City. Consideration may be given to the expansion beyond the boundaries of St. Louis County into St. Charles and Jefferson Counties subject to limits of distance and practicality. The location of these magnet schools should be be determined by agreement between the St. Louis Board of Education and the suburban school districts involved. The State and the St. Louis Board of Education will investigate the availability of funding for this program. A joint report on the status and results including the availability of technical assistance and funding of this effort should be given to the Court by the United States, the State defendants, and the St. Louis Board of Education on December 15, 1980.

2. The filing date of November 1, 1980 provided for in paragraph 12(b) of the said Order for a plan to consolidate or merge and full desegregation of the vocational programs is hereby extended to December 15, 1980.

3. Paragraph 12(c) is hereby amended as to the following provisions: On or before February 16, 1981 the State defendants and the St. Louis Board of Education shall prepare and submit to the Court a feasibility plan of interdistrict school desegregation involving the St. Louis school district and such suburban school districts, that will provide complete and lasting school desegregation. These considerations may apply to those suburban school districts which are not necessarily confined to the suburban districts located in St. Louis County but limited only by considerations of feasibility and practicality, including reasonableness of transportaton times and distances. This feasibility plan should include educational and ancillary components such as those outlined in the Court of Appeals' opinion of March 3, 1980 in this case, and should specifically include pupil assignment and administrative reorganization provisions.

4. The filing date of November 1, 1980 provided for in paragraph 12(d) of the said Order for a suggested plan to insure that the operation of federally assisted housing programs in the St. Louis metropolitan area will facilitate the St. Louis school desegregation is hereby extended to November 17, 1980.

5. Dr. Gary Orfield and Edward T. Foote shall continue their work of coordination and assistance to the parties, particularly those having direct responsibility under any of the foregoing paragraphs. It is expected that Dr. Orfield will be available to assist the State defendants who will take the leading role in developing the feasibility plan under paragraph 12(c) as amended herein. Dr. Orfield is authorized, upon notice to the Court and the parties, to engage such additional experts and develop such additional information as he deems necessary in the performance of his court-designated duties. Dr. Orfield shall

submit to the Court on November 17, 1980 an interim status report on the progress that is being made by the parties in the development of their respective reports to the Court. Dr. Orfield shall submit a final, substantive report three weeks after the date on which the three parties referred to submit the plans and reports required of them.

DATED this 17th day of September, 1980.

James H. Meredith
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

CRATON LIDDELL, et al., *Plaintiffs,* v. THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al., *Defendants.*	**No. 72-100-C (C)**

ORDER

A memorandum dated this date is hereby incorporated into and made a part of this order.

IT IS HEREBY ORDERED that:

1. Pursuant to paragraph 12(a) of the Court's Order of May 21, 1980 (as amended September 17, 1980), the State of Missouri and particularly the State Board of Education and the Commissioner of Education of the State of Missouri shall submit a new plan of voluntary and cooperative desegregation on or before February 2, 1981. The plan shall encompass each district within St. Louis County. Jefferson and St. Charles Counties shall also be included for use of magnet schools to be located in St. Louis City and County.

2. The State of Missouri shall report back to the Court on March 2, 1981 as to those districts in St. Louis

County, Jefferson and St. Charles Counties that are willing to participate in the plan and those that are not willing to participate in the plan. The report of March 2, 1981 shall include the number of students that each district is willing to receive and those that they desire to send outside of their district, either to magnet schools in the County or in the City of St. Louis, including the race and grade of those students.

DATED this 19th day of December, 1980.

J. H. Meredith
United States District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al.,
Plaintiffs,

v.

THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, Missouri, et al.,
Defendants.

No. 72-100-C (C)

MEMORANDUM

On December 15, 1980, the State of Missouri submitted a plan pursuant to paragraph 12(a) of the Court's Order of May 21, 1980. The Court has examined the plan as well as the joint report filed by the United States and the Board of Education of the City of St. Louis.

This Court is well aware of the problems encountered by the Board of Education of the State of Missouri attempting to obtain the voluntary cooperation of the County school districts in a plan which would assist in the desegregation of the City schools. The Court is also aware that the State of Missouri has appealed the orders of this Court; arguments on these matters have been heard by the United States Court of Appeals for the Eighth Circuit. However, the fact remains that the Court of Appeals for the Eighth Circuit has found that the State of Missouri as a matter of law has a duty to eliminate segregation in the schools of this State. That Court also suggested to this Court that an effort be made to work out a voluntary plan of integra-

tion within the County school districts. *See Adams* v. *United States*, 620 F.2d 1277, 1296 (8th Cir. 1980).

It is the opinion of this Court that the plan submitted by the State of Missouri is insufficient for this Court to make a determination as to whether or not it is feasible to pursue further the voluntary avenues of integration with the County schools. Various parties of this suit have indicated that it is their intention to add as parties to this suit a number of the districts in St. Louis County as well as the school districts in Jefferson and St. Charles Counties if a voluntary plan cannot be formulated. In one last effort to promote a voluntary plan, this Court will order the State of Missouri, and particularly the Board of Education for the State of Missouri and the Commissioner of Education for the State of Missouri, to submit another voluntary and cooperative plan on or before February 2, 1981.This plan shall contain the following:

1. The number of students that each district in the County can accommodate caused by the decrease in the number of students between the school years 1979-80 and the beginning of school year 1980-81.

2. Specific details for each district on the number of teachers, available space, and the desirability of its location for students from either the City of St. Louis or other districts within the County.

3. The present racial mixture of each school district in St. Louis County.

4. A plan providing for the interchange of students between the districts of the County in order to achieve more integration, and between the County and the City.

5. Specific recommendations for locations of magnet schools and the manner in which they may be implemented both on a part-time and a full-time basis for students within the County and from the City.

6. Specific financial estimates of costs and the means whereby the plan may be financed. The burden of financing will be borne primarily by the State of Missouri and shall discuss the possibilities of:

a. New legislation;

b. A fiscal incentive bill so that the districts participating will enhance their situation by participating;

c. Money to be taken from surplus of the State and given to the State Board of Education to pay the cost of transportation and additional expenses involved; and

d. Remuneration from the federal government on such plans.

7. Specifics as to the types and locations of magnet schools within the County. The plan should be specific on how the locations have been chosen. Locations shall be chosen in a fashion that would allow students from Jefferson County and St. Charles County to participate in the magnet schools if they desire.

The State of Missouri has a strong, effective Department of Education. It has a great deal of expertise and experience and should experience little difficulty in drawing and implementing a plan of voluntary and cooperative integration which is educationally sound and comprehensive. The Court will be looking forward to its comprehensive report to be filed on February 2, 1981. This report shall assume that each district in the County will participate in the voluntary and cooperative plan. The plan shall encompass every district in St. Louis County.

When the plan is filed on February 2, 1981, it shall also be sent to all parties of this litigation and to every district in St. Louis County as well as St. Charles and Jefferson Counties.

The Department of Education of the State of Missouri shall then contact each district in the County and report back to the Court on March 2, 1981. Included in its report shall be a list of those districts in St. Louis, Jefferson and St. Charles Counties that are willing to participate and the manner in which they are willing to participate. Included also shall be a breakdown for each district of the number of students the district is willing to receive and the number of students the district is willing to send to other districts, including the race and grade of those students participating. The Department of Education shall also report on those districts which refuse to participate in the plan.

DATED this 19 day of December, 1980.

J. H. Meredith
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al., *Plaintiffs,* v. THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al., *Defendants.*	**No. 72-100C(4)**

ORDER

This matter is before the Court on the Board of Education's motion filed on January 27, 1981, to stay discovery proceedings.

Parties to this nine-year-old suit have continually delayed meeting obligations to remedy the effects of unconstitutional segregation. This Court has been directed by the Eighth Circuit Court of Appeals to "countenance no excuse for further delay." *Liddell* v. *Board of Education of the City of St. Louis*, No. 80-1458, slip op. at 20 n.6 (8th Cir., Feb. 13, 1981). To this end, the Court denied, on February 26, 1981, State defendants' motion to stay Judge Meredith's order of December 19, 1980. The orders of this Court must be complied with or action will be taken against the parties as herein detailed.

For the reasons stated below, the Board's motion to stay discovery is granted for a period of sixty days fol-

lowing the date of this order, except insofar as discovery relates to the Special School District. In addition, the State defendants, in conjunction with the City Board of Education and the United States, shall comply with Judge Meredith's order dated December 19, 1980, within sixty days of the date of this order, with an interim progress report to be filed within thirty days.

I. *Background.*

Prior to the Supreme Court holding in *Brown v. Board of Education,* 347 U.S. 483 (1954), the State of Missouri required segregation in schools by law. The State Constitution provided that:

> Separate schools shall be provided for white and colored children, except in cases otherwise provided for by law. Mo. Const. art. IX, § 1(a)(1945).

Several state statutes similarly required segregation in public schools. *See, e.g.,* Act of February 6, 1847, § 1, 1847 Mo. Laws 103; Act of February 17, 1865, § 13, 1865 Mo. Laws 170; Act of June 11, 1889, § 7051a, 1889 Mo. Laws 226. For example, one statute in effect at the time *Brown* was decided provided that

> Separate free schools shall be established for the education of children of Arican descent; and it shall herein be unlawful for any colored child to attend any white school, or for any white child to attend a colored school. Mo. Rev. Stat. § 163.130 (1939).

Until 1954, any school board in the State of Missouri attempting desegregation would have found itself in violation of the Constitution and statutes of the State of Missouri.

In these circumstances, the State of Missouri stands before this Court in a different light than do other parties in this case.

Eighth Circuit Court of Appeals Mandate: March 3, 1980

On March 3, 1980, the Eighth Circuit Court of Appeals found that the Board of Education of the City of St. Louis had failed to integrate the "state-mandated segregated [school] system" as required by the Supreme Court's mandates of *Brown* v. *Board of Education, supra;* 349 U.S. 294 (1955). *Adams* v. *United States, supra* at 1280. The Court of Appeals directed the district court to require "the Board of Education, in conjunction with the parties . . . to develop and implement a plan that will integrate the St. Louis public schools." *Id.*

District Court Orders

On May 21, 1980,, Judge Meredith ordered State defendants, the United States and the City Board of Education [hereinafter "Polities"]:

> 12(a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the court for approval by July 1, 1980.

The Court hereby reaffirms Judge Meredith's Order in directing the City Board and the United States to cooperate in the preparation of such a plan.

Delay of Compliance with Court Orders

The questions here presented are not new to this Court. State defendants have repeatedly made application to this and other courts in an effort to delay compliance with Judge Meredith's orders.

It is clearly established that unconstitutional segregation of public schools must be remedied "with all deliberate speed." *Brown v. Board of Education, supra,* 349 U.S. at 201. *See, e.g., Green* v. *County School Board of New Kent County,* 391 U.S. 430, 439 (1968) ("The burden on a school board today is to come forward with a plan that promises realistically to work and promises realistically to work *now.*"); *Griffin* v. *County School Board of Prince Edward County,* 377 U.S. 218, 234 (1963) ("The time for mere 'deliberate speed' has run out . . . .").

Notwithstanding a clear constitutional obligation, the following chronological review illustrates defendants' continual delay and failure to comply.

A. *June 17, 1980:* State defendants appealed Judge Meredith's Order to the Eighth Circuit Court of Appeals. On August 15, 1980, the Appeals Court denied the request for a stay.

B. *June 20, 1980:* Judge Meredith extended the deadline for filing a 12(a) plan until July 14, 1980.

July 14, 1980: Defendants submitted an Interim Joint Report and Judge Meredith granted defendants an extension until August 22, 1980, in which to file a final report.

August 22, 1980: Defendants submitted a Second Interim Joint Report.

C. *September 2, 1980:* Mr. Justice Blackmun denied the State defendants' request for a stay of Judge Meredith's May 21, 1980, ruling.

September 9, 1980: Mr. Justice Rehnquist denied the same request.

D. *September 17, 1980:* Judge Meredith amended paragraph 12(a) of the order dated May 21, 1980, by changing the date of July 1, 1980 to December 15, 1980 . . ."

Insufficiency of Compliance

On December 15, 1980, State defendants filed a plan pursuant to the Court's May 21, 1980, order, as amended. On the same date, the City Board of Education and the United States filed a Joint Report Under Paragraph 12(a) of the Court's Order of May 21, as amended, stating:

> [N]otwithstanding the efforts of all parties, it has proven impossible to arrive at the degree of consensus which is necessary for a Joint Report. Therefore, the United States and the City Board felt constrained to prepare and submit the present Report independently from the the State defendants . . . . Several draft plans have been circulated by the State . . . but none of them addresses the requirements of the Order to a degree sufficient to reach or even approximate compliance.

Following a thorough review of the State's plan, Judge Meredith issued an order and memorandum, on December 19, 1980, stating:

> It is the opinion of this Court that the plan submitted by the State of Missouri is insufficient for this Court to make a determination as to whether or not it is feasible to pursue further the voluntary avenues of integration with the County schools.

The Judge ordered the State of Missouri to "submit a new plan of voluntary and cooperative desegregation on or before February 2, 1981." Further, the Judge ordered:

> The State of Missouri shall report back to the Court on March 2, 1981 as to those districts in St. Louis County, Jefferson and St. Charles Counties that are willing to participate in the plan.

Continuing Delay

On January 28, 1981, State defendants filed a motion for a stay of Judge Meredith's order of December 19, 1980.

The parties to this action have filed three motions in opposition to State defendants' motion for stay; one motion has been filed in favor:

1. In Opposition—February 2, 1981, Response of the United States in Opposition to Motion for Stay of this Court's Order of December 19, 1980.

2. In Opposition—February 5, 1981, Board's Response to State's Motion to Stay Order of December 19, 1980 and to State Report under Paragraph 12(a).

3. In Opposition—February 12, 1981, Adams, Plaintiff-Intervenor's Memorandum in Opposition to All Motions for Stays and Further Delays.

4. In Support—February 4, 1981, Suggestions of the Special School District[1] of St. Louis County in Support of State Defendant's Motion to Stay the Order of the Court of December 19, 1980.

On February 2, 1981, State defendants filed a Report Pursuant to the Court's Order of December 19, 1980. The Report states in part that State defendants are unable to

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[1]The Special School District is itself resisting an order of the Eighth Circuit Court of Appeals to integrate vocational schools. ("We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year." *Liddell* v. *Board of Education of the City of St. Louis, supra,* slip op. at 19.) *In re Special School District of St. Louis County,* No. 80-1456 (8th Cir., Aug. 15, 1980) (denying petition for writ of prohibition), reh. den. (8th Cir., Sept. 10, 1980). *See also Special School District of St. Louis County* v. *Mallory,* No. 80-876-C(5) (E.D. Mo., Sept. 23, 1980) (dismissing request for injunction and declaratory judgment); *Special School District* v. *Mallory,* No. 80-1155-CV-C (W.D. Mo., filed July 1, 1980) (petition for injunction and declaratory judgment).

file a "meaningful, workable, voluntary plan which is educationally sound," because State defendants were unable to gather necessary data and information due to the threat of future interdistrict litigation.

On February 13, 1981, the Eighth Circuit Court of Appeals denied State defendants' motion for a stay of Judge Meredith's December 19, 1980, order. State defendants filed a notice of appeal of the December 19 ruling to the Eighth Circuit Court of Appeals on February 17, 1981. Notice was filed without a request for certification by the district court under 28 U.S.C. § 1292.

Eighth Circuit Court of Appeals Opinion: February 13, 1981

The Eighth Circuit Court of Appeals upheld Judge Meredith's May 21, 1980, Order, stating:

> We note that the district court has found it necessary to extend the deadlines for filing the proposed plans under paragraph 12(a)-(c) and that it is apparently having some difficulty in getting complete and adequate proposals from the parties. We take this opportunity to stress the legal obligation of the State of Missouri, the United States and the Board of Education to develop and implement the plans contemplated by paragraph 12. It is imperative that the district court countenance no excuse for further delay.

Liddell v. *Board of Education of the City of St. Louis, supra*, slip op. at 20 n.6.

On February 26, 1981, this Court denied the motion which State defendants filed on January 28, 1981, for a Stay of Judge Meredith's December 19, 1980, order. Judge Meredith's order required defendants to file a plan on February 2, 1981, and a report on March 2, 1981.

II. *Grounds for Contempt Proceedings.*

The foregoing public record reveals extraordinary machinations by the State defendants in resisting Judge Meredith's orders. In these circumstances, the Court can draw only one conclusion. The State has, as a matter of deliberate policy, decided to defy the authority of the Court.

Let there be no misunderstanding. This is not a simple case of a private litigant failing to take proper measures to comply with the Court's orders. This case is quite different. The public interest is involved to a much greater extent when a party's actions serve to undercut the implementation of the Court's desegregation orders. *See Morgan* v. *McDonough*, 540 F.2d 527, 533-34 (1st Cir. 1976), affirming the district court's power to fashion an extraordinary remedy to deal with intransigent and obstructionist officials who failed to engage in cooperative, voluntary efforts and continuously resisted desegregation in a pattern of defiance and delay.

The constitutional dimensions, so important and so far-reaching in dealing with the rights of children and their parents and guardians in school desegregation cases, demand full respect of the federal court system. *See Harvest* v. *Board of Public Instruction of Mantee County, Florida*, 312 F.Supp. 269, 274-75 (M.D. Fla. 1970), denying a motion to stay a mandatory injunction requiring school desegregation.

To grant the State defendants a stay would permit the State to escape triumphantly from the consequences of its definance of Judge Meredith's orders. If the State's position rests on a correct view of the law, it follows that the law can be flouted and brought into disrepute by the defendants with impunity.

The Court would be doing much less than its duty if the State defendants were not held accountable for their

actions. Where there has been willful disobedience to an order of the court and a measure of contumacy on the part of the defendant, inveterate principles of both equity and the common law mandate that the Court exercise jurisdistion to punish for contempt of court. *See* 8 *Halsbury's Laws of England* 20 (3d ed. 1968), delineating the punitive jurisdiction of court's contempt power as founded upon the good, not of the plaintiffs or of any party to the action, but of the public.

The power to punish for contempt is a drastic remedy. Contempt jurisdiction should be exercised with the greatest caution. If this Court's orders are complied with, there will be no need for contempt proceedings. If they are not executed, the Court will order the State defendants, the City Board of Education and the United States to show cause why they should not be found in contempt.

III. *Avoidance of Contempt Proceedings Compliance with Court Orders*

The State defendants, in conjunction with the Board of Education of the City of St. Louis and the United States, [the Polities], shall comply with Judge Meredith's orders within sixty days of the date of this order, with an interim progress report to be filed within thirty days. If the Polities, jointly and/or individually, fail to comply, this Court may accept plans submitted by any parties to this suit or by a Special Master and/or a Review Panel appointed by this Court. Failure of State defendants, the City Board of Education, and the United States to submit an interim plan in compliance with this order within thirty days can result in the issuance of an order of contempt.

Failure of the Polities to submit a plan jointly and/or individually, will leave this Court no alternative but to initiate contempt proceedings against the recalcitrant Polity or Polities. This Court will be left no alternative but to

adopt a plan to remedy the effects of constitutional violations. The power of the Court in this regard is well established. *See Brown* v. *Board of Education*, 349 U.S. 294, 300 (1955) ("In fashioning and effectuating the decrees, the courts will be guided by equitable principles Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs."); *Morgan* v. *McDonough*, *supra* at 533 ("A district court's power to fashion and effectuate desegregation decrees is broad and flexible and the remedies may be 'administratively awkward, inconvenient, and even bizarre.' *Swann* v. *Charlotte-Mecklenburg Board of Education*, 401 U.S. 1, 15-16 (1971)."); *Morgan v. Kerrigan*, 509 F.2d 599, 600 (1st Cir. 1975) ("The district court found pervasive violations of the constitutional rights . . . . The court's obligation is to rectify those violations, availing itself in so doing of the breadth and flexibility inherent in equitable remedies."); *Davis* v. *School District of the City of Pontiac, Inc.*, 487 F.2d 890, 891 (6th Cir. 1973) ("Once a past constitutional violation has been established, 'the scope of a district court's equitable power to remedy past wrongs is broad . . . .'"); *Hart* v. *Community School Board of Brooklyn*, 383 F.Supp. 699, 755-56 (E.D. N.Y. 1974), *aff'd*, 512 F.2d 37 (2d Cir. 1975) ("Having found a violation, the court has broad equitable powers to order changes designed to eliminate future misconduct and to reduce the effect of prior violations. . . . That a decree may require expenditure of public funds is no bar to corrective action."). *See also* Berger, Curtis J., *Away from the Court House and Into the Field: The Odyssey of a Special Master*, 78 Colum. L. Rev. 707 (1978) (delineating the extensive role delegated by the court to a special master in *Hart* v. *Community School Board of Brooklyn*, *supra*, to design a plan to desegregate schools in south Brooklyn, New York).

In order to ensure that a plan is in fact produced in a timely manner for this Court's consideration,

IT IS HEREBY ORDERED that Edward T. Foote, Chairman of the Desegregation Monitoring and Advisory Committee, shall prepare and file a plan by March 27, 1981, in accordance with Judge Meredtih's orders of May 21, 1980, paragraph 12(a) and December 19, 1980.

IT IS HEREBY FURTHER ORDERED that Dr. Gary Orfield, the court appointed expert, shall review the study as submitted by the Chairman within ten days following filing of such plan, and report to the Court his findings and recommendations.

IT IS HEREBY FURTHER ORDERED that nothing herein relieves the obligation of the Polities to comply with the orders of Judge Meredith.

IV. *Board's Motion to Stay Discovery*

The Eighth Circuit Court of Appeals, on February 13, 1981, stated: "We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year." *Liddell* v. *Board of Education of the City of St. Louis, supra,* slip op. at 19.

In an effort to facilitate and expedite voluntary and cooperative planning, this Court grants a stay of discovery for a period of sixty days from the date of this order, except insofar as discovery relates to the Special School District and requirements under paragraph 12(b) of Judge Meredith's May 21, 1980, order.
Therefore,

IT IS HEREBY ORDERED that discovery is stayed for a period of sixty days from the date of this order, except insofar as discovery relates to the Special School District and requirements under paragraph 12(b) of Judge Meredith's May 21, 1980, order.

V. *Protective Order*

The Protective Orders issued by Judge Meredith on June 17, 1980, and October 6, 1980, remain in full force and effect, to-wit:

> IT IS HEREBY SPECIFICALLY ORDERED that nothing any of the parties may do pursuant to these previously mentioned Orders will in any way prejudice their position on appeal and they will be deemed to have done such actions under order of the Court.
>
> * * *
>
> IT IS FURTHER ORDERED that any school district of St. Louis County that enters into a plan of voluntary cooperation with the School Board of the City of St. Louis will not in any way prejudice its legal rights to oppose or resist a suit or orders requiring compulsory cooperation.

And,

> IT IS HEREBY SPECIFICALLY ORDERED that nothing any of the parties may do pursuant to the order of this Court of September 17, 1980, will in any way prejudice their position on appeal and they will be deemed to have done such actions under order of the Court.
>
> * * *
>
> IT IS FURTHER ORDERED that any school district of St. Louis County that enters into a plan of voluntary cooperation with the School Board of the City of St. Louis will not in any way prejudice its legal rights to oppose or resist a suit or orders requiring compulsory cooperation.

In order to facilitate cooperative and voluntary planning in this suit, the Court emphasizes that:

IT IS HEREBY FURTHER ORDERED that any settlement discussions, negotiations, proposals, or responses to proposals arising in connection with the development of a voluntary cooperative desegregation plan shall not be used in evidence in this case.

Dated this 4th day of March, 1981.

William Hungate
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

CRATON LIDDELL, et al., *Plaintiffs,* v. THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al., *Defendants.*	**No. 72-100C(4)**

ORDER

This matter is before the Court following a hearing on one aspect (known as the 12b section) of this lengthy school desegregation action—desegregation of vocational education in the City of St. Louis and St. Louis County. This decree is made and entered into pursuant to prior orders of this Court, the Eighth Circuit Court of Appeals, and the stipulation of facts entered into by parties hereto.

1. This school desegregation action was initiated as a class action on February 18, 1972, and detailed histories of the case are set forth in this Court's opinions of *Liddell* v. *Bd. of Ed. City of St. Louis, etc.*, 469 F.Supp. 1304 (E.D. Mo. 1979); *Liddell* v. *Bd. of Ed. of City of St. Louis, Mo.*, 491 F.Supp. 351 (E.D. Mo. 1980); and in the opinions of the Court of Appeals. *See Liddell* v. *Caldwell*, 546 F.2d 768, 769 (8th Cir. 1976), *cert. denied*, 433 U.S. 914 (1977); *Adams* v. *United States*, 620 F.2d 1277, 1281-84 (8th Cir. 1980); and *Liddell* v. *Board of Education of the City of St. Louis*, No. 80-1458 (8th Cir., Feb. 13, 1981).

The subject matter of this order concerns the integration of area vocational schools of the City of St. Louis and the Special School District of St Louis County, and the delivery of educational services to secondary school students at those schools and in community based or magnet vocational programs.

2. This Court has jurisdiction of the subject matter of this class action, has jurisdiction over all the parties, and hereby enters this judgment and decree.

3. This order is made pursuant to paragraph 12b of Judge Meredith's order herein of May 21, 1980, as amended, providing:

> 12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows . . . .
>
> b. To develop and submit to the Court . . . a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis for implementation in the 1981-1982 school year. *Liddell, supra,* 491 F.Supp. at 353.

This order is further made pursuant to the directive of the Court of Appeals approving paragraph 12b of Judge Meredith's opinion of May 21, 1980, and affirming Judge Meredith's order of May 21, 1980.

The Eighth Circuit Court of Appeals held:

> Section (b) of paragraph 12 is also consistent with the district court's responsibility to order a remedy for existing constitutional violations. The district court specifically found that the State of Missouri's establishment and maintenance of the separate

> Special District for vocational education was "part and parcel of its failure to take affirmative steps to eradicate root and branch the dual system it once formally mandated." . . . Section (b), therefore, was designed to remedy a violation of the State of Missouri. Moreover, the Special District has now been joined as a party defendant in this lawsuit. We see no reason to prevent the opening of a consolidated integrated vocational school at the beginning of the 1981-1982 school year. *Liddell* v. *Board of Education*, No. 80-1458, slip op. at 19.

4. The Special School District of St. Louis County was added as a party defendant to this cause on September 12, 1980, upon motion of the Caldwell plaintiff-intervenors.

On May 4, 1981, stipulations of fact were filed with this Court signed by all parties except the Liddell plaintiffs. On May 20, 1981, Liddell consented to the stipulation of facts so that it has been executed by all parties hereto.

On December 15, 1980, pursuant to paragraph 12b, the St. Louis Board of Education and the State defendants submitted proposed plans concerning vocational educational programs in the City and County. The St. Louis Board proposed expanding the Special School District's boundaries to include the City of St. Louis to serve both the vocational and special education needs for the City of St. Louis and St. Louis County. The proposal recommended as a desegration goal a ratio of two white students to one black student at each traditional site involved, and the implementation of community-based and magnet vocational programs. To implement the City Board's proposal the Board proposed that the Court appoint a nine-member board of education for the district and empower the nine-member board to levy a tax of $.55 to support the basic cost

of vocational and special education. The effect of the levy would be to increase the tax rate in the City of St. Louis by $.55.

The State defendants' proposal suggested that the St. Louis Board and the Special School District (1) initiate at least twenty percent of their offerings on a half-day basis; (2) give consideration to operating the program at O'Fallon and at North and South Technical Schools as well as other unused schools on a three session per day year-round basis; and (3) initiate joint community-based programs. Student transfers between the City Board and the Special School District programs would be on a voluntary basis. No specific desegregation goals were contained in the proposals, and the implementation of the plan as submitted would require increased expenditures by the St. Louis City Board and the Special School District.

The Special School District was not, under paragraph 12b, *supra*, required to submit a plan to the Court, but did submit a proposal on March 24, 1981. The substantive portion of that proposal concerned placing City students in the Special School District's vocational programs in prescribed numbers under certain conditions, and was not specifically designed to address desegregation at O'Fallon Technical School.

On March 4, 1981, the Court set a hearing to begin May 11, 1981, to consider the issues concerning the Special School District and established pretrial procedures for the hearing. On subsequent dates the Court established the agenda for the hearing and the order for the presentation of the issues and evidence.

On May 8, 1981, the Special School District lodged another proposal with the Court. That proposal served as a basis for extensive negotiations which resulted in a proposed consent decree supported by a majority of the parties

and also a plan agreed to by all of the parties except the intervening plaintiffs, Adams.

On May 11, 1981, the Court duly convened for the scheduled hearing. The parties advised the Court they were "embarrassingly close" to reaching a settlement on the vocational education (12b) issues. In response to the parties' requests, the Court deferred the proceedings. Upon the parties' progress reports to the Court, the hearing was continued on a day-to-day basis to accommodate the ongoing settlement negotiations until the parties reduced a proposal into writing and, on May 20, 1981, submitted to the Court a proposed vocational education plan, funding order, and consent decree.

On May 21, 1981, the Court conducted a hearing. Without objection, the Court admitted into evidence the stipulations of fact, as supplemented, and exhibit nos. 1-39 and 41-44 (document no. 40 does not exist) offered by the United States. All parties were provided an opportunity to be heard. The Court issued its funding order and made the proposed consent decree and plan a part of the record.

Parties were notified on May 27, 1981, that a hearing would be held beginning June 9, 1981, on the proposed 12b consent decree. A Notice to Class was filed of record, served by publication and duly posted at all schools operated by the City School Board and at all Special School District schools, on May 27, 1981. Interested individuals were granted until June 8, 1981, to request leave to appear in support or opposition to the proposed decree or to file written memoranda stating their positions. No individual, other than the Adams plaintiffs-intervenors, filed written requests for leave to present opposing testimony and argument. On May 26, 1981, the Adams plaintiffs filed revised objections to the consent decree. The Liddell plaintiffs orally requested leave to argue in opposition to the proposed decree, but did not

request leave to present testimony thereon. Only three letters were received from members of the public which were duly filed, considered by the court, and made a part of the record. Also filed by the attorneys for the school district of University City was a memorandum of comments and suggestions to the Plan. The comments made have either been considered and rejected by the parties, or the suggestions were in fact dealt with in the Plan.

The parties have, in numerous filings with this Court, the Court of Appeals, and the United States Supreme Court, stated their positions as to the facts and law regarding the issues. In the proposed consent decree submitted to the Court, the parties recited that

> By consenting hereto no party retracts its previous positions or concedes that its respective positions are in any way erroneous. However, the parties being desirous of implementing a solution to the issues concerning paragraph 12(b) of the May 21, 1980 order without the expense of litigation, have agreed to the entry of the decree, and the Court being of the opinion that the entry of this decree will effectuate federal law . . . ."

The City of St. Louis, the United States, the Caldwell plaintiffs-intervenors, and the Special School District support the consent decree without equivocation. The Board of Education of the City of St. Louis supports the decree in accordance with the funding order entered on May 21, 1981. The State has executed the consent decree and approves the vocational plan, but is critical of the funding order. The Liddell plaintiffs approve the plan, but withheld approval of the consent decree, questioning the adequacy of the jurisdictional statement in the first paragraph. The intervening plaintiffs, Adams, object to the plan and the decree.

5. Traditionally a "consent decree" is in the nature

of a contract which is sanctioned by the Court as to what decision should be made. *See* discussion in 30A C.J.S., *Equity*, § 678 (1965). Recently, however, it has been held, at least in some decisions, that consent of all the parties is not required for a valid consent decree.

> Unless [a non-consenting party] can demonstrate that it has been ordered to take some action by the decree, or ordered not to take some action, or that its rights or legitimate interests have otherwise been affected, it has no right to prevent the other parties and the Court from signing the decree.

United States v. *City of Miami, Fla.*, 614 F.2d 1322, 1329 (5th Cir.), *reh. granted*, 625 F.2d 1310 (1980). The Court finds that the intervening plaintiffs, Adams, are not ordered to take action or to desist from any action by reason of the decree and the Court finds that their rights or legitimate interests have not been affected hereby.

Notwithstanding the holding in *Miami* on which rehearing was granted, the Court is reluctant under circumstances here to enter an order and judgment as a "consent decree." Not all of the parties have consented to the decree, although it has been approved by a majority thereof. The plan has been approved by all the parties except intervening plaintiffs, Adams. Therefore, the Court hereby adopts the Vocational Education Plan agreed to by seven of the eight parties as its plan to desegregate the vocational schools in the City of St. Louis and St. Louis County. The plan is attached hereto and made a part of this order.

6. At the conclusion of the scheduled evidentiary hearing on the proposed consent decree, funding order, and plan, on June 9, 1981, and after all parties were afforded an opportunity to be heard thereon, the Court finds that the Vocational Education Plan attached hereto is fair, reasonable, adequate and satisfies constitutional require-

ments to integrate the vocational schools in the City of St. Louis and St. Louis County, and conforms to the guidelines of the Eighth Circuit. The Court is satisfied that under the totality of the circumstances, the vocational plan is fair, reasonable, and adequate. *Armstrong* v. *Board of School Directors of the City of Milwaukee*, 616 F.2d 305 (7th Cir. 1980). The Plan calls for a full measure of desegregation and conforms to a level of constitutional compliance. It contains racial goals reflective of the overall black-white student ratios in the two districts. It contains mechanisms for achieving these racial goals. Under the totality of the circumstances, the Court orders the attached plan implemented inasmuch as any student in a vocational school may return to his or her regular high school at will. Vocational education in Missouri is voluntary. A program of vocational education need not be offered, but if it is offered it must be done in a nonsegregative manner. By approving the plan, it facilitates the implementation of a quality educational program in a desegregative atmosphere. The Court adopts the plan as its own because school desegregation is one of those areas in which voluntary resolution, if possible, is preferable to full litigation. *Armstrong, supra*, 616 F.2d at 318; *Mendozo* v. *United States*, 623 F.2d 1338, 1345 (9th Cir. 1980).

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Court approves of the attached Vocational Education Plan for the Boards of the City of St. Louis and the Special School District of St. Louis County and adopts the Plan as its own.

2. The Special School District of St. Louis County, the Board of Education of the City of St. Louis, and the State of Missouri are ordered to implement the Plan forthwith.

3. By April 1 of each school year, the Metropolitan Coordinating Committee described in the Plan shall file with the Court an annual plan, approved by the respective Boards, which shall describe the various steps to be taken to reach the goals indicated in the Plan for the next school year.

4. If any party objects to an annual plan or to any provision of an annual plan submitted to this Court as required in paragraph 3 of this order, that party must file notice of the objection with this Court within thirty days from the date the plan is filed with this Court. If objections are filed, a hearing will be set on the objections at a subsequent date.

5. The progress made in implementing the plan will be reported by the Committee to the Court pursuant to page seven of the attached plan. Additional data reports shall be filed on October 31, 1981, and on March 31, 1982, and on the same dates annually thereafter until further order of the Court. The reports shall contain:

A. The following information by home district, grade level, program and race:

(a) The number of students enrolled in each school or site;

(b) The number of students assigned since the last report to a school or site other than his/her first choice for the purpose of achieving racial goals, and the number who did not accept the assignments.

B. The number of slots available for juniors and seniors at each school or site.

C. A description of the recruitment activities undertaken by either Board or the Committee since the previous report.

D. A description of the measures taken since the last report by each district to achieve parity.

E. All programs moved from one district to another, and the teachers assigned by race, to such moved programs.

F. All unduplicated and magnet programs developed since the last report and their locations.

G. Brief description of any present or proposed construction of expansion of vocational education facilities.

H. Statement whether either District has sold or abandoned any vocational education facility, equipment, or supplies having a total value of more than $500.00 since the previous report.

6. After the completion of the 1985-86 school year, the Court will review the progress made and assess whether the goals of the plan have been met. In the event the goals are not met, upon motion of a party, and after a hearing, the Court may either order a complete merger of the vocational programs with a unified governing and taxing structure, modify the plan attached hereto, or adopt any other plan in accordance with paragraph 12b of the May 21, 1980, order.

The Special School District, the City Board of Education, the United States, and the State of Missouri shall submit an interim report by July 15, 1983, on the success of implementation for the Court's evaluation and recommendation, and for the Court's action, if any, as appropriate.

7. Funds to meet the commitments of the State defendants to the plan approved herein shall be made available by the State defendants and the Missouri General Assembly subject to and in compliance with any applicable provisions of law.

8. No party has consented to the award of litigation costs and/or reasonable attorneys' fees. This matter is reserved for such further negotiations and/or proceedings, including applications to the Court, as may be appropriate following the Court's approval of this decree.

9. All previous orders of this Court not inconsistent herewith remain in full force and effect.

10. In order to establish vocational programs in ninth and tenth grades at regular comprehensive high schools, it is necessary for the City Board to develop, equip, and/or renovate buildings for General Shop, Business Education and Industrial Arts programs at those schools. Additional operating costs such as additional teachers may also be necessary to effectively implement these programs.

There are State of Missouri designated funds allocated for the 1980-81 St. Louis Desegregation Budget which have not been spent in the 1980-81 school year. There are also ESAA funds which have been approved for particular programs for the 1980-81 school year which will not be spent in the 1980-81 school year. The reprogramming of these ESAA funds required the Board of Education of the City of St. Louis to apply immediately for and receive such permission from the United States Department of Education. Therefore, IT IS HEREBY ORDERED that

A. The Board of Education of the City of St. Louis shall establish during the term of the consolidated vocational technical education plan and continuing thereafter vocational programs in General Shop, Business Education and Industrial Arts for grades nine and ten in its regular comprehensive high schools.

B. The Board of Education of the City of St. Louis shall continue to act promptly on its application to the Department of Education to rededicate ESAA funds which

have been approved for particular programs for the 1980-81 school year but which will not be spent in the 1980-81 school year in order to fund costs for the development, equipment, renovation and operational costs for the City Board's vocational programs.

C. One Million Dollars ($1,000,000.00) of State of Missouri designated funds allocated for the 1980-81 St. Louis Desegregation Budget which have not been spent in the 1980-81 school year will be placed in a separate account in order to pay for such costs.

D. The Board of Education of the City of St. Louis shall reimburse the State for State funds identified in subparagraph C above, spent to the extent that monies are available at the end of the 1981-82 school year from the City Board's Debt Retirement Fund which are not otherwise restricted by prior Court order or necessary for the retirement of the City Board's debt. If the City Board has no such funds, the State shall continue to pay such costs from the funds identified in subparagraph C above.

E. If the above funds are still insufficient to develop, equip, renovate and operate these vocational programs, then the remainder of the unspent State designated monies existing in the 1980-81 Desegregation Budget shall be utilized as necessary.

11. During the phase out of ninth and tenth grade students from O'Fallon Technical High School to comprehensive high schools in the City of St. Louis, the State funding allocated for such programs during the school year of phase out shall be paid to the Board of Education of the City of St. Louis for vocational education related matters. Said funding to the City Board shall continue each year thereafter. State defendants have agreed to this provision.

12. The Court recognizes that the Special School District has previously budgeted two million dollars ($2,000,000.00) for equipping West County Technical High School which will open in Year Two of the 12b plan for consolidated vocational programs. Much of this equipment will be used at the discretion of the Metropolitan Coordinating Committee for unduplicated programs under the consolidated program plan.

13. All costs concerning the implementation of the vocational programs shall be subject to review by this Court if any party disputes any of these costs as not being reasonable or necessary for the implementation of this order.

14. In the event that the Board of Education of the City of St. Louis is unable to fund the development, equipment and/or renovation costs and operational costs for its vocational programs from the above sources or with current desegregation budgeted revenues, the Board of Education of the City of St. Louis shall apply to the Court for such appropriate orders as may be necessary to secure additional funds essential for such purposes.

15. As to those dates on the implementation schedule which are now past, the action required thereunder shall be taken within ten days of the date of this order and be effective nunc pro tunc.

16. This Court retains jurisdiction of this action for all purposes including the entry of such additional orders as may, from time to time, be necessary and proper.

Dated this 11th day of June, 1981.

William Hungate
United States District Judge

VOCATIONAL EDUCATION PLAN FOR THE BOARDS OF EDUCTION OF THE CITY OF ST. LOUIS AND THE SPECIAL SCHOOL DISTRICT OF ST. LOUIS COUNTY

1. Primary governance of the consolidated vocational-technical school programs* of the Board of Education of the City of St. Louis (hereinafter "City Board") and the Board of Education of the Special School District of St. Louis County (hereinafter, "Special District") will remain vested in each of the two existing Boards of Education, respectively. This vested authority is the policy decision making responsibility of the respective Boards including but not limited to the operation of the respective programs, employment of staff, development of personnel and appropriation of funds to meet the district's needs.

The plan is continuing in nature and the initial period of the plan will be five years.

2. This plan will be administered by a Metropolitan Coordinating Committee, hereinafter referred to as "the Committee", composed of two staff persons from the vocational department of the City School District and two staff persons from the vocational department of the Special School District. It is recommended that the chief administrative vocational officer and another vocational staff member in each district be selected to serve on this Committee. Selection will be made by the Boards of the respective districts. A fifth member will be appointed by the State Board of Education and will function in the role of an advisor and resource person, and as a tie breaker if

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*This includes O'Fallon, North, South, West and other sites as needed for a community-based or magnet vocational-technical program. Not included are comprehensive high school, middle and elementary vocational or pre-voc programs.

the four other representatives are unable to reach a decision. The State Board representative has a primary responsibility for seeing that the desegregation requirements of this plan are met.

The term of membership of the four vocational representatives shall be for the duration of the plan. Removal of any local representative may only be done with the approval of the Court upon motion of a party.

3. The Committee, in conjunction with the two Boards and with such consultant help as the Committee deems necessary, will develop a Memorandum of Understanding to be entered into by each respective Board. Such Memorandum will provide operational guidelines under which the committee will function with respect to but not limited to such items as:

—Teacher assignment (See paragraph 14)

—Teacher recruitment for vacancies

—Teacher grievance procedures

—Teacher evaluation procedures

—Student application and selection process and criteria

—Student discipline procedures

—Student grievance procedures

—Program development, assessment, revision procedures

—Budget and financial process, procedures and commitment

—Staff development and training to function effectively in a fully desegregated program

—Transportation

—Other items as may be pertinent and necessary for successful administration

The Memorandum of Understanding, upon approval, will be submitted to the Court as an addendum to this plan.

4. The responsibilities of the Committee include, but are not limited to all planning activities and decisons that are a direct result of this plan and necessary to its administration such as:

—Determination and location of programs and offerings

—Student recruitment, selection criteria, and assignment

—Program review, evaluation and revision as needed

—Development and recommendation of budget

—Development and location of any new program, schools or program sites

—Recommendation for any alternative use of existing facilities

—General program administration, operation and maintenance

The Committee will elect a chairperson and a secretary. The chairperson will be responsible for convening the Committee. The Committee will be responsible for keeping a complete record of proceedings and communicating decisions and other information to the appropriate parties.

The Committee will hire an Executive Director, following regular hiring practices of the two Boards insofar as possible, to assume administrative responsibility for program operations. The Executive Director will serve as chief administrative officer to carry out the procedures and programs developed by the Committee. The Executive Director will be an ex-officio, non-voting member of the Committee. The cost of the Executive Director will be paid by the two districts and the State Department of Elementary and Secondary Education in three equal shares.

Matters such as time, dates and places of meetings can be determined at the initial meeting of the Committee. The nature of this plan and the formation of a Committee for vocational education in the Metropolitan St. Louis Area could require professional assistance. Therefore, a small, but adequate budget should be established to hire consultants and to reimburse Committee representatives for out-of-pocket expenses in the performance of their responsibilities. The State will provide the funds for a consultant while the districts reimburse their respective appointees for out-of-pocket expenses.

5. A two member, bi-racial monitoring team will be appointed by the Court, based on recommendations of the Committee and the parties. The team shall consist of experts in vocational education who are in no way connected with the Districts and will conduct two on-site visits of no less than three days each during each of the initial five years. The monitoring team will be charged with the responsibility of assessing the degree to which the plan is successful and will make recommendations to the Committee where appropriate. The team will report to the Court and to the respective Boards any situations, conditions, or problems which appear to impede successful plan implementation which the Committee is unable to correct or solve.

6. The Committee will use the services of the existing vocational advisory committees, which are biracial and reflect a cross section of the community including representatives from business, industry and unions, to provide citizen input, assessment and advice related to each vocational program.

7. At the beginning of the fifth year (1985-1986) it is a goal of the plan to have at each of the four technical schools—North County Technical, South County Technical,

West County Technical and O'Fallon—a racial balance of 65% white and 35% black, with 10 percentage points leeway up or down.

8. In each year the total number of County students placed in City Board and Special District programs may not exceed the total slots available and approved for juniors and seniors in the Special District Technical schools and other developed sites and the total number of City students placed in City Board and Special District programs may not exceed the total slots available and approved for juniors and seniors at O'Fallon and other developed sites. Within this closed system, however, these numbers may change as total program slots in either district are increased or decreased equitably as approved by the Committee. It is the goal of both Districts to significantly increase vocational education opportunities in integrated settings. The Committee will attempt to improve programs by either expanding or contracting offerings, based on need, to the extent that an equal number of additional or reduced slots will be allocated to the City Board and the Special District, and that new programs will follow the 65% white—35% black (plus or minus 10 percentage points) guidelines.

9. After Year 2 of the plan no fee for vocational training will be charged by one district to the other since it is contemplated that the same number of County students will be attending O'Fallon as City students are attending Special District vocational schools. During Years 1 and 2 fees for vocational training will be paid by the respective Districts only for the incremental costs incurred by those Districts for the provision of this first year's instruction of exchange students, and every effort will be made to absorb such students at no cost.

10. Significant recruitment activities for the consolidated vocational technical programs will be undertaken by the Committee and the respective Boards to assure the achievement of the racial balance goals projected.[1] Recruitment will include open houses, mass mailings to parents of the 9th and 10th graders in the metropolitan area, feature newspaper stories, school visits, etc. A major portion of the recruitment activities during the first year will center around the development of recruitment materials for distribution. The responsibility for the development of recruitment materials and methods should be contracted out with the costs being reimbursed by the State.

11. For *duplicated* programs (those which are offered at more than one school site) students will be given their first or second choice program, but in year two and subsequent years such program choice may be at a school other than the student's first choice for the purpose of achieving racial goals. Where the school site is other than the students first choice, the goal of racial balance of the classroom assignment will be 65% white and 35% black, with 10% leeway up or down. Where a student does not wish to accept a site other than his first choice, he is free to remain in his local high school.

12. Funding for new equipment for unduplicated programs will be provided by the State except to the extent that funds of either district have already been earmarked for such new programs. Wherever possible unduplicated programs will be developed from existing equipment, and the Committee will allocate such programs between the two districts so that neither district is burdened with such program equipment cost unfairly. Where existing equipment is used, the State will be responsible only for the costs due to relocation and modification of the equipment or buildings.

13. Parity of program quality will be essential to attract students and to operate on a non-tuition basis. During Year 1 of the plan the Special District and the City Board will each prepare the State form entitled "Guide for Computing Fees for Secondary Students Enrolled in Secondary Schools Designated as Area Vocational Schools". The information will be used as a guide by a consultant hired by the Committee for determining what steps are necessary, if any, to place the programs of each district on a parity for Year 3. Each district will improve or upgrade the physical aspects of any program or facility to reach parity.

No increased costs of the City Board attributable to the achievement of parity between the vocational education programs of the City Board and those of the Special District shall be paid by the Special District. Similarly, no increased costs of the Special District attributable to the achievement of parity between the vocational education programs of the City Board and those of the Special District shall be paid by the City Board. In the event that either Board is unable to fund any increased costs from current revenues including its desegregation funds or from other conventional sources, upon certification by the Committee that such costs and expenses are essential to the implementation of this plan, either Board shall apply to the Court for such appropriate orders as may be necessary to secure additional funds essential for such purposes.

14. Teachers will be encouraged to accept reciprocal visiting professorships between districts and to develop opportunities for team teaching. As the plan evolves, should a program be moved by the Committee from one district to another, the teacher will have the opportunity to follow that program and teach it at the new site. The teacher would have the option to remain an employee of

the sending Board or become an employee of the receiving Board. In the event there is an opening in the Special District vocational program for which a displaced City Board vocational teacher is qualified, the Special District would give the qualified City Board teacher preference. Reciprocally, if a Special District vocational teacher is displaced and an opening exists in the vocational program of the City Board, the qualified Special District teacher would have preference over all other applicants. The districts will provide a one-step salary incentive for teachers who transfer voluntarily to the other District if the transfer decreases racial concentrations.

15. The Committee will immediately initiate a study of courses offered at the comprehensive high schools in the city and county to identify ways of reducing duplication of programming between such high schools and the four vocational schools.

16. After the completion of the 1985-86 school year, the Court will review the progress made and assess whether the goals of this plan have been met. In the event the goals are not met, upon motion of a party, and after a hearing, the Court may either order a complete merger of the vocational programs with a unified governing and taxing structure, modify this plan, or adopt any other plan in accordance with paragraph 12(b) of the May 21, 1980 order.

17. Scheduling enunciated in this plan is not intended as limiting. If goals can be achieved earlier than indicated, nothing in this plan is intended to preclude such result.

For the first year of operation steps will immediately be taken toward completion of the following activities in accordance with the schedule set out below:

IMPLEMENTATION SCHEDULE

	Activity	*Completion Date*
1.	Appoint Metropolitan Coordinating Committee	May 29, 1981
2.	Initiate search for Executive Director	May 29, 1981
3.	Initial strategies developed for fall '81 programming and student assignments	June 15, 1981
4.	Implement initial strategies	June 17, 1981
5.	Initiate study of comprehensive high school programs	June 19, 1981
6.	Complete rough draft of Memorandum of Understanding and submit to both Boards	June 22, 1981
7.	Board Review of memorandum	July 1, 1981
8.	Revise Memorandum as needed	July 15, 1981
9.	Submit Memorandum to Boards for ratification	August 1, 1981
10.	Detailed strategies developed for '81-'82	August 3, 1981
11.	Hire Executive Director	August 3, 1981
12.	First monitoring team visit	August 28, 1981
13.	Implement fall strategies	Sept. 1, 1981
14.	File preliminary progress report with Boards and Court	Sept. 15, 1981
15.	Complete comprehensive high school study	Nov. 2, 1981

16. Specific strategies developed for Year 2—1982-83 — March 1, 1982
17. Board review and approval of strategies — March 15, 1982
18. Second monitoring team visit — March 19, 1982
19. Submit Year 2 plan to Court with progress report to date — April 1, 1982
20. Implement Year 2 strategy plan — April 5, 1982
21. Monitoring team visit — Nov. 1982
22. Repeat steps 16—21 each year — continuing

By April 1 of each school year, the Committee will file with the Court a plan, approved by the respective Boards, which describes the steps to be taken to reach the goals indicated herein for the next school year, and a progress report of accomplishments, including findings of the Monitoring Team.

IMMEDIATELY—(Prior to the end of the 1980-81 School Year and Summer)

1. Draft agreement.
2. Boards and parties ratification of agreement, and the submission to the Court for approval.
3. Establish Metropolitan Coordinating Committee.
4. Draft and ratify Memorandum of Understanding.
5. Special District and City Board recruitment of City and County students for interdistrict transfers for Fall.
6. Each District fill out State's "Guide for Computing Fees . . . ".
7. Review organization of City and Special District Vocational Departments to insure ability to respond to and implement plan.

YEAR 1—1981-82

IMPLEMENTATION:

1. Expected racial distribution of 85% white and 15% black in Special District Technical Schools.
2. Continue and increase public relations campaign and recruitment.
3. Assure that no student will be displaced from on-going program.
4. Initiate community-based programs[2] of business office education and urban agriculture. (need state approval) Racial balance goal is 65% white and 35% black, but with 10 percentage points leeway up or down.
5. Initiate half day programs at North County Technical and South County Technical.
6. Cosmetic improvements at three present technical schools.

PLAN:

1. Develop nine unduplicated programs for initiation in Year 2.
2. Develop and seek funding for three additional community based programs for initiation in Year 2.
3. Develop common or cooperative metropolitan placement service.
4. Define relationship between Special District and City Board recruitment. Develop common or cooperative approaches.
5. Evaluate City Board and Special District programs for changes for Year 2. Duplicated programs must be of comparable quality and substance. Plan for complete parity by Year 3.

6. Develop programs, staff and equipment for West County Technical.

7. Revise curriculum for Special District occupational orientation to include exposure to City Board offerings.

Available Slots: City Board 970

Special District 2500

YEAR 2—1982-83

IMPLEMENTATION:

1. Expected racial distribution of 82% white and 18% black in Special District technical schools.

2. Initiate unduplicated programs at O'Fallon with goal of 65% white and 35% black, but with 10 percentage points leeway up or down.

3. Open West County Technical and initiate unduplicated programs with goal of 65% white and 35% black, but with 10 percentage points leeway up or down.

4. Placement of the nine unduplicated programs referred to in paragraphs 2 and 3 above will be determined by the Committee.

5. Initiate half day programs at O'Fallon.

6. Expected racial distribution of 10-15% white and 85-90% black at O'Fallon.

7. Initiate three additional community based programs.

8. Establish common or cooperative placement service.

9. Establish common or cooperative recruitment and counselling service.

10. Initiate revised occupational orientation in Special District.

PLAN:

1. Develop three additional unduplicated programs for initiation in Year 3.
2. Develop and seek funding for two additional community based programs for initiation in Year 3.
3. Evaluate all City Board and Special District programs for changes for Year 3.
4. Develop programs, staff and equipment for 2nd year (Year 3 of plan) at West County Technical.
5. Necessary steps to insure full parity by Year 3.

Available Slots Projected: City Board 1150

Special District 2800

YEAR 3—1983-84

IMPLEMENTATION:

1. Expected racial distribution of 78% white and 22% black in Special District technical schools.
2. Expected racial distribution of 50% white and 50% black at O'Fallon.
3. Initiate three additional unduplicated programs with goal of 65% white and 35% black, but with 10 percentage points leeway up or down.
4. Initiate second year programming at West County Technical.
5. Initiate two additional community based programs.
6. Continue and adjust public relations and recruitment.
7. O'Fallon will initiate 10th grade Occupational Orientation magnet program for City students with goal of 50% white and 50% black.

PLAN:

1. Develop one additional unduplicated program for initiation in Year 4.

2. Evaluate all City Board and Special District programs for initiation in Year 4.

Available Slots Projected: City Board 1300

Special District 2950

YEAR 4—1984-85

IMPLEMENTATION:

1. Expected racial distribution of 75% white and 25% black in Special District technical schools.

2. Expected racial distribution of 65% white and 35% black at O'Fallon.

3. At least thirteen unduplicated programs will be in operation.

4. West County Technical will be at its full student capacity.

5. At least seven community based programs will be in operation in the metropolitan area.

Available Slots Projected: City Board 1500

Special District 3150

YEAR 5—1985-86

IMPLEMENTATION:

1. Expected racial distribution for all schools within the range contemplated in paragraph 7.

2. Court will review progress in accordance with paragraph 16.

FOOTNOTES

1. Examples of Recruitment and Publicity Include:
   a. Set up and conduct a recruitment/orientation program in each sending school for ninth and tenth grade students and parents in the City and County.
   b. City Board and Special District counselor/recruiters are to be present at all programs to answer specific questions with regards to each schools course offerings and application procedures.
   c. A member of the Committee should be present at each program to answer students and parents questions with regard to transportation, discipline, class assignment, etc.
   d. Develop brochures and applications depicting all vocational offerings in the City Board and Special District.
   e. Send the brochure and application procedures to all 9th and 10th grade students currently enrolled in all public and private sending schools in the City Board and Special District.
   f. Set up open houses at all the vocational schools, City Board and Special District on different days, and notify by mail all 9th and 10th grade students of time and locations of activities.
   g. Develop a plan by which students may visit the technical schools while the schools are in session. This plan could also include that students in a particular vocational program may have extended time off from school and perhaps visit the shop for a few days or even a week (a welder in the City Board program would visit a weld shop in the Special District).
   h. Develop the following information material.
      a) slide presentation on City Board and Special District program offerings
      b) promotional films
      c) public service announcements
   i. An all out effort to get industrial support and endorsements from City and County manufacturers.
   j. Recruit local sports personalities, state legislators, etc. for promotional spots and personal appearances.
   k. Develop feature T.V. and radio programs featuring the voluntary plan and its positive aspect on the community.
   l. Incorporate the use of feature articles and continuing news items in the City and County papers.
   m. Establish an elementary career education program in all school districts to focus on vocational programming in the metropolitan area.

n. Set up counselor recruiting teams (1 City–1 County) to go to all the sending schools to recruit for the vocational programs.

o. Set up career information centers in all high schools and junior high schools in the City and County.

2. While application for these programs has been made by the Special District there is no reason why agreement cannot be reached between the City Board and the Special District for placement of these or other community based programs referred to in this Plan in the City.